10–15–97
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# Federal Register

Wednesday
October 15, 1997

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**Reader Aids**

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

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## CFR PARTS AFFECTED IN THIS ISSUE

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

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# Presidential Documents

**Title 3—**

**The President**

## Proclamation 7037 of October 10, 1997

## White Cane Safety Day, 1997

**By the President of the United States of America**

**A Proclamation**

As we stand at the dawn of the 21st century, new technologies are rapidly changing and improving the lives of Americans. For one group of Americans in particular—those who are blind or visually impaired—these technologies have opened doors to unparalleled opportunities. Blind Americans now can more readily access information of all kinds, and these advances have brought important improvements to the education, careers, and daily lives of blind and visually impaired people.

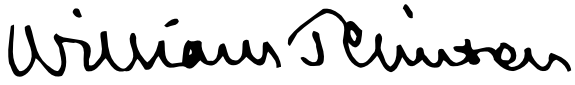
In this time of extraordinary progress, however, the simple yet profoundly useful white cane remains an indispensable tool and symbol of independence that has afforded countless blind and visually impaired citizens the opportunity to pursue the American Dream. And so, as we all share in a new era of expanded technological innovations that improve the lives of all of our Nation's citizens, we also celebrate the white cane for its ability to empower and recognize it as the embodiment of freedom.

As a Nation, let us also reassert our commitment to ensuring equal opportunity, equal access, and full participation of citizens with disabilities in our community life. This year, we celebrated the reauthorization of the Individuals with Disabilities Education Act, reaffirming our belief that all students can learn and must have the opportunities and resources necessary to do so. And we must continue to enforce vigorously the Americans with Disabilities Act, so that our blind and visually impaired fellow citizens enjoy equal opportunity, access to public and private services and accommodations, and a workplace free of discrimination.

To honor the numerous achievements of blind and visually impaired citizens and to recognize the significance of the white cane in advancing independence, the Congress, by joint resolution approved October 6, 1964, has designated October 15 of each year as ''White Cane Safety Day.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 15, 1997, as White Cane Safety Day. I call upon the people of the United States, government officials, educators, and business leaders to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 97–27492
Filed 10–14–97; 8:45 am]
Billing code 3195–01–P

# Rules and Regulations

Federal Register
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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 78

**[Docket No. 97–082–1]**

### Brucellosis in Cattle; State and Area Classifications; California

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

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

**SUMMARY:** We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of California from Class A to Class Free. We have determined that California meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from California.

**DATES:** Interim rule effective October 15, 1997. Consideration will be given only to comments received on or before December 15, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97–082–1, 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. 97–082–1. 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:** Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

**SUPPLEMENTARY INFORMATION:**

#### Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, California was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for California, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing California from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from California.

#### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from California.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of California from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in California, as well as buyers and importers of cattle from this State.

There are an estimated 17,900 cattle herds in California that would be affected by this rule. All of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $4 per head.

Therefore, we believe that changing the brucellosis status of California will not have a significant economic impact on the small entities affected by this interim rule.

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.

### 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

### Paperwork Reduction Act

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

### List of Subjects in 9 CFR Part 78

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

Accordingly, 9 CFR part 78 is amended as follows:

## PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

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

### § 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by adding ''California,'' immediately after ''Arizona,''.

3. In § 78.41, paragraph (b) is amended by removing ''California,''.

Done in Washington, DC, this 9th day of October 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–27257 Filed 10–14–97; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 95–NM–142–AD; Amendment 39–10156; AD 97–21–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Model BAe 125–800A Series Airplanes and Hawker 800 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model BAe 125–800A series airplanes and Hawker 800 series airplanes, that requires a detailed visual inspection of the fuel feed hose assemblies of the auxiliary power unit (APU) to detect overheating, degradation, proper routing, and adequate clearance; and the correction of any discrepancies found. This amendment also requires modification of the fuel feed hose of the APU. This amendment is prompted by reports of heat damage to the fuel feed hose assembly of the APU due to contact between the hose assembly and hot surfaces. The actions specified by this AD are intended to prevent heat damage of the fuel feed hose, which could lead to a possible fire/smoke hazard when failure of the hose assembly occurs and consequent fuel mist or spray is emitted into the rear equipment bay.

**DATES:** Effective November 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 19, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model BAe 125–800A series airplanes and Hawker 800 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on October 25, 1996 (61 FR 55233). That action proposed to require a detailed visual inspection of the fuel feed hose assemblies of the auxiliary power unit (APU) to detect overheating, degradation, proper routing, and adequate clearance; and the correction of any discrepancies found. That action also proposed to require modification of the fuel feed hose of the APU.

### Consideration of Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Explanation of Change Made to the Proposal

The FAA has revised the final rule to reflect the corporate name change of Beech Aircraft Corporation to Raytheon Aircraft Company.

**Conclusion**

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

The FAA estimates that 70 Raytheon Model BAe 125–800A series airplanes and Hawker 800 series airplanes of U.S. registry will be affected by this AD. It will take approximately 2 work hours per airplane to accomplish the required inspection at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $8,400, or $120 per airplane.

It will take approximately 4 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $218 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $32,060, or $458 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**97–21–03 Raytheon Aircraft Company (Formerly Raytheon Aircraft Corporation; Beech Aircraft Corporation; Raytheon Corporate Jets, Inc.; British Aerospace, PLC; DeHavilland; Hawker Siddeley):** Amendment 39–10156. Docket 95–NM–142–AD.

*Applicability:* Model BAe 125–800A series airplanes (including military variants C–29A and U–125) and Hawker 800 series airplanes, constructor's numbers 8091 and subsequent; equipped with Turbomach auxiliary power unit (APU) (Modification 259404B); certificated in any category.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent heat damage to the fuel feed hose assemblies of the auxiliary power unit (APU), which could lead to a possible fire/smoke hazard if failure of the hose assembly occurs and fuel mist or spar is consequently emitted into the rear equipment bay, accomplish the following:

(a) Within 75 days after the effective date of this AD, perform a one-time detailed visual inspection to detect overheating or degradation of the hose assemblies; to verify proper routing of fuel feed hose assembly of the APU; and to verify if adequate clearance (0.5 inch) exists between the hose assembly (outlet from the fuel pump box of the APU) and the left-hand mixer valve/main air valve assemblies and associated hot air ducting; in accordance with Hawker Service Bulletin SB. 49–45, dated May 15, 1995.

(1) If any overheating or degradation is detected, prior to further flight, replace the hose assembly with a new assembly and ensure that proper clearance and routing exists, in accordance with the service bulletin.

(2) If the clearance of the hose assembly is improperly routed, prior to further flight, re-route the assembly maintaining proper clearance, in accordance with the service bulletin.

(3) If the clearance of the hose assembly is inadequate and the hose assembly is properly routed, prior to further flight, adjust the hose assembly to achieve the 0.5-inch clearance, in accordance with the service bulletin.

(b) Prior to the accumulation of 200 flight hours after the effective date of this AD, modify the fuel feed hose of the APU, in accordance with Hawker Service Bulletin SB.49–47–25A825A, dated August 1, 1995.

(c) Accomplishment of the modification of the fuel feed hose of the APU in accordance with Hawker Service Bulletin SB.49–47–25A825A, dated August 1, 1995, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(f) The actions shall be done in accordance with Hawker Service Bulletin SB.49–45, dated May 15, 1995, and Hawker Service Bulletin SB.49–47–25A825A, dated August 1, 1995. The incorporation by reference of that document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in British airworthiness directive 005–05–95.

(g) This amendment becomes effective on November 19, 1997.

Issued in Renton, Washington, on October 7, 1997.

**James V. Devany,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–27089 Filed 10–14–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

## 15 CFR Part 400

**[Docket No. 97092934–7234–01]; Order No. 929**

**RIN 0625–AA49**

## Technical Amendments to Regulations of the Foreign-Trade Zones Board

**AGENCY:** Foreign-Trade Zones Board, International Trade Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Foreign-Trade Zones (FTZ) Board adopts the following technical amendments to its regulations to reflect recent changes both to the Foreign-Trade Zones Act of 1934 (''FTZ Act'') and in the organizational structure of the United States Customs Service.

**EFFECTIVE DATE:** October 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** John J. Da Ponte, Jr., Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW, Washington, DC 20230 (202/482–2862).

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations of the Foreign-Trade Zones Board are amended to conform with the following changes: (1) An amendment to the FTZ Act, pursuant to section 910 of the National Defense Authorization Act of 1996, Pub. L. 104–201, 110 Stat. 2422, 2620 (1996), which removed the Secretary of the Army from membership on the Foreign-Trade Zones Board; and 2) recent revisions by the U.S. Customs Service to its organizational structure, which eliminated Regional Commissioner and District Director positions, broadening the role of Port Directors.

### Classification

This rulemaking action was determined to be not significant for purposes of Executive Order 12866. The Administrative Procedure Act requirements of notice and comment and delayed effective date are unnecessary for these technical amendments because the FTZ Board has no discretion in making these amendments which are required by Pub. L. 104–201 and reorganization within the U.S. Customs Service. Because notice and comment are not required by 5 U.S.C. 553(b)(B) or any other statute for these technical amendments and procedures, a regulatory flexibility analysis is not required and was not prepared for purposes of the Regulatory Flexibility Act. This rulemaking involves information collection requirements which are cleared under OMB Control No. 0625–0139 for purposes of the Paperwork Reduction Act. 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 unless that collection of information displays a currently valid OMB Control Number

### List of Subjects in 15 CFR Part 400

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Foreign-trade zones, Harbors, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 15 CFR part 400 is amended as set forth below:

## PART 400—REGULATIONS OF THE FOREIGN–TRADE ZONES BOARD

1. The authority for 15 CFR part 400 continues to read as follows:

**Authority:** Foreign-Trade Zones Act of June 18, 1934, as amended (Pub. L. 397, 73rd Congress, 48 Stat. 998–1003 (19 U.S.C. 81a–81u)).

2. Section 400.2 is revised to read as follows:

### § 400.2 Definitions.

(a) *Act* means the Foreign-Trade Zones Act of 1934, as amended.

(b) *Board* means the Foreign-Trade Zones Board, which consists of the Secretary of the Department of Commerce (chairman) and the Secretary of the Treasury, or their designated alternates.

(c) *Customs Service* means the United States Customs Service of the Department of the Treasury.

(d) *Executive Secretary* is the Executive Secretary of the Foreign-Trade Zones Board.

(e) *Foreign-trade zone* is a restricted-access site, in or adjacent to a Customs port of entry, operated pursuant to public utility principles under the sponsorship of a corporation granted authority by the Board and under supervision of the Customs Service.

(f) *Grant of authority* is a document issued by the Board which authorizes a zone grantee to establish, operate and maintain a zone project or a subzone, subject to limitations and conditions specified in this part and in 19 CFR part 146. The authority to establish a zone includes the authority to operate and the responsibility to maintain it.

(g) *Manufacturing,* as used in this part, means activity involving the substantial transformation of a foreign article resulting in a new and different article having a different name, character, and use.

(h) *Port Director* is normally the director of Customs for the Customs jurisdictional area in which the zone is located.

(i) *Port of entry* means a port of entry in the United States, as defined by part 101 of the regulations of the Customs Service (19 CFR part 101), or a user fee airport authorized under 19 U.S.C. 58b and listed in part 122 of the regulations of the Customs Service (19 CFR part 122).

(j) *Private corporation* means any corporation, other than a public corporation, which is organized for the purpose of establishing a zone project and which is chartered for this purpose under a law of the state in which the zone is located.

(k) *Processing,* when referring to zone activity, means any activity involving a change in condition of merchandise, other than manufacturing, which results in a change in the Customs classification of an article or in its eligibility for entry for consumption.

(l) *Public corporation* means a state, a political subdivision (including a municipality) or public agency thereof, or a corporate municipal instrumentality of one or more states.

(m) *State* includes any state of the United States, the District of Columbia, and Puerto Rico.

(n) *Subzone* means a special-purpose zone established as an adjunct to a zone project for a limited purpose.

(o) *Zone* means a foreign-trade zone established under the provisions of the Act and these regulations. Where used in this part, the term also includes subzones, unless the context indicates otherwise.

(p) *Zone grantee* is the corporate recipient of a grant of authority for a zone project. Where used in this part,

the term ''grantee'' means ''zone grantee'' unless otherwise indicated.

(q) *Zone operator* is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee or an intermediary entity, with the concurrence of the Port Director.

(r) *Zone project* means the zone plan, including all of the zone and subzone sites that the Board authorizes a single grantee to establish.

(s) *Zone site* means the physical location of a zone or subzone.

(t) *Zone user* is a party using a zone under agreement with the zone grantee or operator.

3. Section 400.11 is amended by revising paragraph (d)(1) to read as follows.

**§ 400.11 Authority of the Board.**

* * * * *

(d) *Determinations of the Board.* (1) The determination of the Board will be based on the unanimous vote of the members (or alternate members) of the Board.

* * * * *

4. Section 400.24 is amended by revising paragraph (d)(5)(i)(B) to read as follows:

**§ 400.24 Application for zone.**

* * * * *

*(d) Exhibits.* * * *

(5) Exhibit Five (Maps) shall consist of:

(i) The following maps and drawings:

* * * * *

(B) A local community map showing in red the location of the proposed zone; and

* * * * *

5. Section 400.24 is further amended by revising paragraph (h) to read as follows:

**§ 400.24 Application for zone.**

* * * * *

(h) *Format and number of copies.* Unless the Executive Secretary alters the requirements of this paragraph, submit an original and 8 copies of the application on 8½″ × 11″ (216 × 279 mm) paper. Exhibit Five of the original application shall contain full-sized maps, and copies shall contain letter-sized reductions.

* * * * *

6. Section 400.26 is amended by revising paragraph (a)(2) to read as follows:

**§ 400.26 Application for expansion or other modification to zone project.**

(a) *In general.* * * *

(2) The Executive Secretary, in consultation with the Port Director, will determine whether the proposed modification involves a major change in the zone plan and is thus subject to paragraph (b) of this section, or is minor and subject to paragraph (c) of this section. In making this determination the Executive Secretary will consider the extent to which the proposed modification would:

(i) Substantially modify the plan originally approved by the Board; or

(ii) Expand the physical dimensions of the approved zone area as related to the scope of operations envisioned in the original plan.

* * * * *

7. Section 400.27 is amended by revising paragraph (c)(3) to read as follows:

**§ 400.27 Procedure for processing application.**

* * * * *

(c) *Procedure—Executive Secretary responsibilities.* * * *

(3) Send copies of the filing and initiation notice and the application to the Commissioner of Customs and the Port Director, or a designee.

* * * * *

8. Section 400.27 is further amended by revising paragraph (d)(1) to read as follows:

**§ 400.27 Procedure for processing application.**

* * * * *

(d) *Case reviews—procedure and time schedule*—(1) *Customs review.* The Port Director, or a designee, in accordance with agency regulations and directives, will submit a technical report to the Executive Secretary within 45 days of the conclusion of the public comment period described in paragraph (c)(2) of this section.

* * * * *

9. Section 400.27 is further amended by revising paragraph (d)(2)(v)(C) to read as follows:

**§ 400.27 Procedure for processing application.**

* * * * *

(d) *Case reviews—procedure and time schedule*—* * *

(2) *Examiners reviews—non-manufacturing/processing.* * * *

(v) * * *

(C) The Customs adviser shall be notified when necessary for further comments, which shall be submitted within 45 days after notification.

* * * * *

**§ 400.27 [Amended]**

10. In § 400.27, paragraph (f)(1) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

11. In § 400.27, paragraph (f)(2) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

**§ 400.28 [Amended]**

12. In § 400.28, paragraph (a)(1) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

13. In § 400.28, paragraph (a)(6) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

**§ 400.32 [Amended]**

14. In § 400.32, paragraph (b)(1)(iv) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

**§ 400.41 [Amended]**

15. In § 400.41, the third sentence is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

**§ 400.42 [Amended]**

16. In § 400.42, paragraph (a)(1) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

17. In § 400.42, paragraph (b)(1) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

18. In § 400.42, paragraph (b)(3) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

**§ 400.44 [Amended]**

19. In § 400.44, paragraph (b)(4) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

20. In § 400.44, paragraph (c)(3) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

**§ 400.45 [Amended]**

21. In § 400.45, paragraph (a) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

22. In § 400.45, paragraph (b) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

23. In § 400.45, paragraph (c) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

**§ 400.46 [Amended]**

24. In § 400.46, paragraph (c) is amended by removing ''District Director'' where appearing therein, and adding in its place, ''Port Director''.

By order of the Foreign-Trade Zones Board, Washington, DC, this 6th day of October 1997.

**Robert S. LaRussa,**

*Assistant Secretary of Commerce for Import Administration Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 97–27145 Filed 10–14–97; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 600, 601, and 606

**[Docket No. 96N–0395]**

**RIN 0910–AA93**

## Revision of the Requirements for a Responsible Head for Biological Establishments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the biologics regulations by deleting the requirements for a biologics establishment to name a ''responsible head'' or ''designated qualified person'' to exercise control of the establishment in all matters relating to compliance with regulatory requirements and to represent the establishment in its dealings with FDA. Because many manufacturers of biological products are firms that have more than one manufacturing location and complex corporate structures, it may no longer be practical for one individual to represent a manufacturer or possess expertise in all matters. This change will provide manufacturers with more flexibility in assigning control and oversight responsibility within a company. This final rule is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiative, and it is intended to reduce the burden of unnecessary regulations on industry without diminishing public health protection.

**EFFECTIVE DATE:** October 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

In the **Federal Register** of January 29, 1997 (62 FR 4221), FDA published a proposed rule to amend the biologics regulations by deleting the requirements for a biologics establishment to name a responsible head or designated qualified person to represent the establishment in its dealings with FDA.

Under § 600.10(a) (21 CFR 600.10(a)), a manufacturer of biological products currently is required to name a responsible head who is to exercise control of the establishment in all matters relating to compliance with regulations in parts 600 through 680 (21 CFR parts 600 through 680) and who is to represent the manufacturer in all pertinent matters with the Center for Biologics Evaluation and Research (CBER). This individual must also have an understanding of the scientific principles and techniques involved in the manufacture of biological products. When FDA announced in the **Federal Register** of June 3, 1994 (59 FR 28821 and 28822), the review by CBER of certain biologics regulations to identify those regulations that are outdated, burdensome, inefficient, duplicative, or otherwise unsuitable or unnecessary, § 600.10(a) was included. FDA also held a public meeting on January 26, 1995, to discuss the retrospective review effort and to provide a forum for the public to voice its comments on the retrospective review.

Many of the comments submitted requested revision or elimination of the requirements for a responsible head in § 600.10(a). The comments stated that the requirement for a responsible head to be an expert in multiple functions and to be responsible for a number of facility locations is incompatible with current industry practice. The comments added that the list of activities in § 600.10(a) is extremely broad and this regulation could be interpreted to require the responsible head to have an intimate understanding of a wide variety of extremely complex activities. All of these activities require specific expertise, and it may not be practical to expect one person to be an expert in all of those areas. Some comments addressed the requirement that the responsible head be responsible for training and have the authority to enforce discipline, stating that direct line supervision and management personnel are better qualified and in a better position to enforce or direct the enforcement of discipline and the performance of assigned functions by employees engaged in the manufacture of products. Many comments requested the designation of an alternate responsible head, especially in the situation of multiple locations.

As part of the President's ''Reinventing Government'' initiative, a report entitled ''Reinventing the Regulation of Drugs Made From Biotechnology'' was issued in November 1995. The report announced several initiatives to reduce the burden of FDA regulations on the biologics industry without reducing public health protection, including a proposal to remove the requirements in § 600.10(a) for a responsible head. The commitment to remove requirements for a responsible head was based on FDA's determination that, with the many changes that have occurred in science, technology, and corporate structure, it no longer may be practical for most biologics manufacturers to rely on one individual to meet the requirements in § 600.10(a). In addition, the responsible corporate officer doctrine, e.g., *United States* v. *Park*, 421 U.S. 658 (1975); *United States* v. *Dotterweich*, 320 U.S. 277 (1943), places the burden of ensuring compliance with the statutes and regulations applicable to biological products on corporate officials ''standing in responsible relation to a public danger.'' (*Dotterweich*, 320 U.S. at 281.) Thus, it is not necessary to require manufacturers to designate a responsible head in order to enforce the duty responsible corporate officials have to implement measures to ensure that violations do not occur. (*Park*, 421 U.S. at 672.)

In accordance with a revision to the definition of ''manufacturer'' in § 600.3 (see 61 FR 24227, May 14, 1996), an applicant may apply for and obtain a license for a biological product to be manufactured at more than one manufacturing site that may or may not be owned by the applicant. Therefore, applicants may want to designate more than one person with primary responsibility to maintain adequate oversight of multiple manufacturing sites and ensure that each is conforming to FDA's requirements for current good manufacturing practices and the applicable biologics standards. Many biologics manufacturers also manufacture drugs that are regulated by the Center for Drug Evaluation and Research (CDER) under the Federal Food, Drug, and Cosmetic Act. CDER's regulations do not contain an analogous requirement for a responsible head. FDA's proposal to revise the requirements with respect to a responsible head is an effort to harmonize CBER's and CDER's policies and requirements and to keep pace with changes in science, technology, and corporate structure.

### II. Highlights of the Final Rule

Under the final rule, an authorized official may be chosen by the applicant

to receive and send correspondence to CBER. The applicant may choose to have more than one authorized official. Accordingly, the agency is amending § 600.10 by removing and reserving paragraph (a) and revising the heading of paragraph (b) to read ''*Personnel.*'' The agency is also amending § 601.2 *Applications for establishment and product licenses; procedures for filing* by adding the statement ''The applicant, or the applicant's attorney, agent, or other authorized official shall sign the application'' in paragraph (a) and new paragraph (c)(6). Finally, the agency is amending § 601.25(b)(3)(VIII) by replacing ''signed by the responsible head (as defined in § 600.10 of this chapter) of the licensee'' with ''signed by an authorized official of the licensee.''

FDA is also removing § 606.20(a), which contains language similar to that in § 600.10(a) and applies to all blood establishments, including registered, unlicensed blood establishments. Like other components of the biologics industry, the blood industry has experienced changes in science, technology, and corporate structure. Complex donor and transfusion recipient issues, the evolution of sophisticated computerized laboratory and donor equipment, complicated serology problems, and state-of-the-art laboratory techniques have all contributed to changes within the structure of blood establishments, regardless of size. To ensure the quality and safety of the blood supply, many blood establishments employ personnel who are experts in donor issues, infectious disease, computers, molecular biology, serology, transfusion issues, quality control, administration, and management. It is no longer practical to expect one individual to have expertise in all the subspecialties of transfusion medicine. Accordingly, to provide sufficient flexibility for a blood establishment to select a person with appropriate training and experience to be responsible for each facet of its operation, the agency is removing and reserving § 606.20(a).

## III. Comments on the Proposed Rule and FDA Responses

FDA received 11 comments on the proposed rule, which included comments from biological product manufacturers, including blood establishments. Eight of the comments fully supported the proposed rule.

Three comments received from the blood industry expressed concern that they would no longer have a single responsible head through whom they would interact with FDA, and that the responsible persons in the organization will have diminished authority and responsibility in communication and decisionmaking because their responsibilities and authority will no longer be mandated by the regulations.

FDA does not agree. In the final rule, only the requirement to retain a single responsible head is being eliminated. Any applicant wishing to have a single authorized representative who would serve the function of the responsible head as previously set forth in § 600.10(a), may do so. In the past, FDA has often encountered circumstances where the responsible head of an establishment was unable to adequately carry out her or his responsibilities in assuring that the establishment complies with FDA requirements. This failure was often due, in part, to the responsible head having inadequate knowledge in an area to determine whether FDA's requirements were being met or the responsible head was too remote in location or corporate structure to adequately monitor activities to assure requirements were being met. Removal of this requirement will allow organizations to designate responsible individuals with appropriate training and experience to provide better communication to the agency as functional experts in their respective areas of responsibility. FDA believes that the industry should have the flexibility to assign responsibility in a way that best fits each applicant's organizational structure as long as the public health protection is not diminished.

Furthermore, the elimination of the requirement for a responsible head or designated qualified person does not decrease the duty that responsible corporate officers have to ensure compliance with the law. (*Park*, and *Dotterweich*, *supra*.)

## IV. Effective Date

The final rule is effective October 15, 1997. As provided under 5 U.S.C. 553(d) and § 10.40(c)(4) (21 CFR 10.40(c)(4)), the effective date of a final rule may not be less than 30 days after the date of publication, except for, among other things, ''a regulation that grants an exemption or relieves a restriction'' (§ 10.40(c)(4)(i)). Because this rule will provide greater flexibility in assigning control and oversight responsibility within a biological product establishment by eliminating the responsible head requirement, FDA believes that an immediate effective date is appropriate.

## V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of a rule on small entities. The final rule would have no compliance costs and would not result in any new requirements. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that the final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required.

## VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## Lists of Subjects

*21 CFR Part 600*

Biologics, Reporting and recordkeeping requirements.

*21 CFR Part 601*

Administrative practice and procedure, Biologics, Confidential business information.

*21 CFR Part 606*

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 600, 601, and 606 are amended as follows:

## PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 600 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

### § 600.10 [Amended]

2. Section 600.10 *Personnel* is amended by removing and reserving paragraph (a) and by revising the heading of paragraph (b) to read ''*Personnel*.''

## PART 601—LICENSING

3. The authority citation for 21 CFR part 601 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263; 15 U.S.C. 1451–1461.

4. Section 601.2 is amended by adding a sentence before the last sentence in the introductory text of paragraph (a) and by adding new paragraph (c)(6) to read as follows:

### § 601.2 Applications for establishment and product licenses; procedures for filing.

(a) * * * The applicant, or the applicant's attorney, agent, or other authorized official shall sign the application. * * *

* * * * *

(c) * * *

(6) The applicant, or the applicant's attorney, agent, or other authorized official shall sign the application.

5. Section 601.25 is amended by revising the first sentence of paragraph (b)(3)(VIII) to read as follows:

### § 601.25 Review procedures to determine that licensed biological products are safe, effective, and not misbranded under prescribed, recommended, or suggested conditions of use.

* * * * *

(b) * * *

(3) * * *

(VIII) If the submission is by a licensee, a statement signed by an authorized official of the licensee shall be included, stating that to the best of his or her knowledge and belief, it includes all information, favorable and unfavorable, pertinent to an evaluation of the safety, effectiveness, and labeling of the product, including information derived from investigation, commercial marketing, or published literature.

* * *

* * * * *

## PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

6. The authority citation for 21 CFR part 606 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

### § 606.20 [Amended]

7. Section 606.20 *Personnel* is amended by removing and reserving paragraph (a).

Dated: September 4, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 97–27298 Filed 10–14–97; 8:45 am]

BILLING CODE 4160–01–F

## PENSION BENEFIT GUARANTY CORPORATION

## 29 CFR Part 4044

## Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in November 1997.

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

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

**SUPPLEMENTARY INFORMATION:** The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during November 1997.

For annuity benefits, the interest assumptions will be 5.70 percent for the first 25 years following the valuation date and 5.00 percent thereafter. The annuity interest assumptions represent a decrease (from those in effect for October 1997) of 0.20 percent for the first 25 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The lump sum interest assumptions represent a decrease (from those in effect for October 1997) of 0.25 percent for the period during which a benefit is in pay status; they are otherwise unchanged.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during November 1997, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

### List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

## PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 49 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

**Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums**

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by $i_1$, $i_2$, * * *, and referred to generally as $i_t$) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

| For valuation dates occurring in the month— | The values of $i_t$ are: | | | | | |
|---|---|---|---|---|---|---|
| | $i_t$ | for $t$ = | $i_t$ | for $t$ = | $i_t$ | for $t$ = |
| * * * | * | | * | * | | * |
| November 1997 | .0570 | 1–25 | .0500 | >25 | N/A | N/A |

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is $y$ years (where $y$ is an integer and $0<y\leq n_1$), interest rate $i_1$ shall apply from the valuation date for a period of $y$ years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is $y$ years (where $y$ is an integer and $n_1<y\leq n_1+n_2$), interest rate $i_2$ shall apply from the valuation date for a period of $y-n_1$ years, interest rate $i_1$ shall apply for the following $n_1$ years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is $y$ years (where $y$ is an integer and $y>n_1+n_2$), interest rate $i_3$ shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate $i_2$ shall apply for the following $n_2$ years, interest rate $i_1$ shall apply for the following $n_1$ years, and thereafter the immediate annuity rate shall apply.]

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | | * | * | * | * | * | * |
| 49 | 11–1–97 | 12–1–97 | 4.50 | 4.00 | 4.00 | 4.00 | 7 | 8 |

Issued in Washington, D.C., on this 9th day of October 1997.

**David M. Strauss,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 97–27273 Filed 10–14–97; 8:45 am]

**BILLING CODE 7708–01–P**

## POSTAL SERVICE

## 39 CFR Part 111

## Bulk Parcel Return Service and Shipper Paid Forwarding

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the decision of the Governors of the Postal Service in Postal Rate Commission Docket No. MC97–4, Bulk Parcel Return Service and Shipper Paid Forwarding.

**EFFECTIVE DATES:** The amendments to section S concerning Bulk Parcel Return Service are effective October 12, 1997, and the amendments to sections F and R concerning Shipper Paid Forwarding are effective January 4, 1998.

**FOR FURTHER INFORMATION CONTACT:** Tom DeVaughan, (202) 268–4491.

**SUPPLEMENTARY INFORMATION:** On June 6, 1997, the United States Postal Service filed a Request with the Postal Rate Commission pursuant to sections 3622 and 3623 of the Postal Reorganization Act, 39 U.S.C. 101 et seq., for a recommended decision on proposed changes to the Domestic Mail Classification Schedule (DMCS). The proposed revisions also included proposed new fees. The Postal Service requested the consideration of two changes affecting the forwarding and return of Standard Mail (A) parcels that were initially considered in Docket No. MC97–2. It requested that Bulk Parcel Return Service (BPRS) and Shipper Paid Forwarding (SPF) be established.

Pursuant to 39 U.S.C. 3624, on September 4, 1997, the PRC issued its Recommended Decision in Docket MC97–4, to the Governors of the United States Postal Service. That decision adopted the BPRS and SPF classifications and fees proposed in a Revised Stipulation and Agreement submitted by most of the parties in the proceeding. Pursuant to 39 U.S.C. 3625, the Governors acted on the PRC's Recommendation on October 6, 1997.

The Governors approved the PRC's recommendations, and set an implementation date of October 12, 1997, for BPRS. Due to software and other support modifications needed for Computer Forwarding Sites and the Address Change Service network to support SPF, the Governors set January 4, 1998, for the effective date of SPF.

Under current practice, forwarding and return of bulk Standard Mail (A) parcels are obtained by endorsing pieces ''Forwarding Service Requested'' (or until December 31, 1997, ''Forwarding and Return Postage Guaranteed'') or ''Address Service Requested'' (or until December 31, 1997, ''Forwarding and Return Postage Guaranteed, Address Correction Requested''). The postage charged at the time that a parcel is returned is a weighted fee that is 2.472 times the applicable single-piece rate. This fee indirectly pays for forwarding service of other parcels: 1.472 is the average number of pieces forwarded for

every piece that is returned. Multiplying 1.472 by the single-piece rate is intended to cover the cost of the forwarding service.

BPRS and SPF will provide mailers other options. SPF allows mailers to pay forwarding postage (the applicable single-piece rate) directly through the use of the tracking capabilities of the existing electronic Address Change Service (ACS). Only mailers authorized to participate in ACS and who mail machinable parcels with the required endorsement will be eligible. An advance postage due deposit account is required. BPRS, through bulk handling of returned parcels, lowers the average cost of the return service. BPRS mailers must arrange for pickup of their returned parcels in bulk at a specified frequency at a designated postal facility(s), or arrange to have their returned parcels delivered to them in bulk by the Postal Service. Only machinable parcels weighing less than one pound, with the required endorsements, are eligible for BPRS. A minimum requirement of 10,000 returned parcels per year at each site (return address) is required. BPRS mailers must document their returned parcel volume and maintain an advance deposit account. A flat $1.75 per-piece fee for each returned parcel and an annual permit fee of $85.00 are required at each designated facility. BPRS and SPF can be combined, beginning with the January 4, 1998, effective date for SPF.

This final rule contains the DMM standards adopted by the Postal Service to implement the Governors decision. Appropriate clarifications are included.

**Lists of Subjects in 39 CFR Part 111**

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

## PART 111—[AMENDED]

The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

Revise the following sections of the Domestic Mail Manual as noted below:

* * * * *

**F FORWARDING AND RELATED SERVICES**

*F010 Basic Information*

* * * * *

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

* * * * *

**5.3 Standard Mail (A)**

* * * * *

[Redesignate existing 5.3c through 5.3e as 5.3d through 5.3f, respectively; redesignate existing 5.3g as 5.3i. Amend 5.3 by adding a new 5.3c and new 5.3h to read as follows:].

* * * * *

c. Effective January 4, 1998, mail that qualifies for Shipper Paid Forwarding (F020) under the applicable standards is forwarded (and if necessary) returned at the Standard Mail (A) single-piece rate.

* * * * *

h. Mail that qualifies for Bulk Parcel Return Service (BPRS) under the applicable standards in S924 is returned at the BPRS per piece fee, if the mailer uses one of the endorsements that includes ''— BPRS.'' Until January 4, 1998, when SPF becomes effective, mailers using BPRS will not be able to request forwarding services.

| | |
|---|---|
| ''Return Service Requested—BPRS'' ..... | Piece returned with new address or reason for nondelivery attached; only the Bulk Parcel Return Service fee charged (address correction fee not charged). |
| *(Effective January 4, 1998)* | |
| ''Address Service Requested—BPRS'' ..... | Months 1 through 12: piece forwarded; no charge to addressee; separate ACS notice of new address provided; ACS address correction fee and postage at single-piece Standard Mail (A) rate charged via ACS participant code.<br>Months 13 through 18: piece returned with new address attached; only the Bulk Parcel Return Service fee charged (address correction fee not charged).<br>After month 18, or if undeliverable: piece returned with reason for nondelivery attached; only Bulk Parcel Return Service fee charged (address correction fee not charged). |

* * * * *

*F020 Forwarding*

* * * * *

3.0 POSTAGE FOR FORWARDING

* * * * *

**3.5 Standard Mail (A)**

[Amend 3.5 to read as follows:]

Generally, Standard Mail (A) is subject to collection of additional postage from the mailer when forwarding service is provided by charging the Standard Mail (A) weighted fee on all returns. Shipper Paid Forwarding, used in conjunction with Address Change Service (F030), provides mailers of Standard Mail (A) machinable parcels an option of paying forwarding postage at the Standard Mail (A) single-piece rate. Mail that qualifies for Bulk Parcel Return Service (BPRS) is returned at the BPRS per piece charge if the mailer uses one of the ancillary service endorsements that specifies BPRS (e.g., ''Return Service Requested—BPRS''). * * *

* * * * *

*F030 Address Correction, Address Change, FASTforward,*SM *and Return Services*

* * * * *

2.0 ADDRESS CHANGE SERVICE (ACS)

**2.1 Description**

[Amend 2.1 to read as follows:]

Address Change Service (ACS) centralizes, automates, and improves the processing of address correction requests for mailers. ACS involves transmitting address correction information to a central point where the changes are consolidated electronically by unique publication or mailer identifier. These records are sequentially organized by USPS-assigned codes and distributed to each participating mailer. ACS can also be used to pay forwarding postage on most Standard Mail pieces using Shipper Paid Forwarding under 2.5.

* * * * *

[Add new 2.5 to read as follows:]

**2.5 Shipper Paid Forwarding**

Shipper Paid Forwarding (SPF) is an ACS fulfillment vehicle. It allows mailers of Standard Mail (A) machinable parcels (effective January 4, 1998), and most Standard Mail (B) to pay forwarding charges via approved ACS participant code(s). For information, write to the National

Customer Support Center (see G043 for address).

* * * * *

R RATES AND FEES

* * * * *

*R600 Standard Mail*

* * * * *

10.0 FEES

**10.1 Mailing**

[Redesignate current 10.1b and 10.1c as 10.1c and 10.1d respectively; add new 10.1b to read as follows]

b. Bulk Parcel Return Service Permit Fee: $85.00

* * * * *

[Add new 10.4 to read as follows:]

**10.4 Bulk Parcel Return Service Fee**

Bulk Parcel Return Service fee per piece returned: $1.75

* * * * *

*S900 Special Postal Services*

* * * * *

*S920 Convenience*

* * * * *

[Add new S924 to read as follows:]

*S924 Bulk Parcel Return Service*

1.0 BASIC INFORMATION

**1.1 Description**

Bulk Parcel Return Service (BPRS) provides a method whereby high-volume parcel mailers may have undeliverable-as-addressed machinable parcels returned to designated postal facilities for bulk pickup by the mailer at a predetermined frequency prescribed by the Postal Service, or delivered by the Postal Service in bulk in a manner and frequency prescribed by the Postal Service. Mailers using this service pay only the BPRS per piece fee for each parcel returned.

**1.2 Availability**

BPRS is available only for the return of machinable parcels, as defined in C050, initially prepared and mailed as Regular or Nonprofit Standard Mail (A) machinable parcels. Mail for which BPRS is requested must bear one of the BPRS endorsements in F010 and a return address that is in the delivery area of the post office that issued the BPRS permit. Effective January 4, 1998, BPRS may also be combined with the Shipper Paid Forwarding service (F030). Any Standard Mail (A) parcel that qualifies for a single-piece Standard Mail (B) rate under the applicable standards, and that contains the name of the Standard Mail (B) rate in the mailer's ancillary service endorsement is not eligible for BPRS.

**1.3 Payment Guarantee**

The permit holder guarantees payment of fees on all returned parcels from a centralized advance deposit postage due account.

**1.4 Where Service Established**

BPRS may be established at any post office in the United States and its territories and possessions or at any U.S. military post office overseas (APO/FPO). It is not available in any foreign country.

2.0 PERMITS

**2.1 Application Process and Participation**

To participate in BPRS, the mailer must make a written request to the postmaster at each post office where parcels are to be returned. The request must:

a. Demonstrate receipt of 10,000 returned machinable Standard Mail (A) parcels at a given delivery point during the previous 12 months, or

b. Demonstrate a high likelihood of receiving a minimum of 10,000 returned machinable Standard Mail (A) parcels at a given delivery point in the coming 12 months.

The written request must be submitted with the annual permit fee, a description of the mail (e.g., size, packaging), a sample of the documentation to be used to substantiate individually, the number of parcels returned each day, and the requested frequency and location of the pickup or delivery of the parcels. If the mailer's request is approved, the USPS issues the mailer an authorization letter and agreement with the BPRS permit number (which will be used solely for account and annual fee tracking). The BPRS permit number is not to appear on the mail. The mailer must have a valid postage due advance deposit account and pay the annual BPRS permit fee to participate in BPRS.

**2.2 Permit Renewal**

An annual renewal notice is provided to each BPRS permit holder. The notice must be returned to the post office that issued the permit with the fee payment or authorization for the postmaster to deduct the fee from the advance deposit account by the expiration date of the permit. Written authorization is not needed for permit renewal if there is no change to the authorization on file at the post office where the parcels are to be returned. If, after notice, the permit holder does not renew a BPRS permit, the USPS endorses the mail ''Bulk Parcel Return Service Canceled'' and charges postage due at the single-piece Standard Mail (A) rate. If the single-piece Standard Mail (A) rate is not paid, the mail is then forwarded to the nearest mail recovery center for final disposition.

**2.3 Procedure**

An approved BPRS permit and fee payment must be on file at every post office to which parcels are returned.

**2.4 Permit Cancellation**

The USPS may cancel a permit if the permit holder fails to meet the minimum requirements, refuses to accept and pay the required fee for parcels returned, fails to keep sufficient funds in the advance deposit account to cover fees due for returned parcels, or fails to meet terms of the authorization (e.g., fails to pickup mail on agreed upon frequency).

**2.5 Reapplying After Cancellation**

To receive a new permit at the same post office after a BPRS permit is canceled, the applicant must resubmit a letter to that office; pay a new permit fee; provide evidence that the reasons for the permit cancellation are corrected; and provide and keep funds in an advance deposit account to cover normal returns for at least 2 weeks.

3.0 POSTAGE AND FEES

**3.1 Permit Fee**

A permit fee is charged once each 12-month period on the anniversary date of the permit. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that which is in effect on the date of payment.

**3.2 Payment**

The permit holder must pay BPRS per piece fees by an advance deposit account. The post office delivers parcels under this service only when estimated sufficient funds are in the account to pay all applicable fees. The permit holder may establish a unique advance deposit account or use an existing one to pay postage under BPRS.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

**Neva R. Watson,**

*Alternate Liaison Officer.*

[FR Doc. 97–27299 Filed 10–10–97; 11:50 am]

BILLING CODE 7710–12–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[CA157–0050a; FRL–5907–7]**

## Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Santa Barbara County Air Pollution Control District, California

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve Santa Barbara County Air Pollution Control District's (Santa Barbara or District) Rule 370 ''Potential to Emit—Limitations for Part 70 Sources'' (prohibitory rule) under Clean Air Act (CAA) sections 110 and 112(l). This rule creates federally-enforceable limits on potential to emit for sources with actual emissions less than 50 percent of the major source thresholds. This approval action will incorporate Rule 370 into the federally-approved State Implementation Plan (SIP) for California. The rule was submitted by the State to satisfy certain Federal requirements for an approvable SIP. EPA is finalizing the approval of this rule into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. EPA is taking this action without prior proposal because the Agency views this action as a non-controversial amendment and anticipates no adverse comments.

**DATES:** This action is effective on December 15, 1997 unless adverse or critical comments are received by November 14, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to: John Walser, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the rule and EPA's Technical Support Document for the rule are available for public inspection at the following locations:

Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, 17th Floor, San Francisco, CA 94105

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.

Copies of the regulations being incorporated by reference in today's rule are available for inspection at the following location: Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** John Walser (telephone 415/744–1257), Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On June 15, 1995, the Santa Barbara County Air Pollution Control District adopted Rule 370: Potential to Emit—Limitations for Part 70 Sources. The purpose of the rule is to exempt small sources from the requirements of the federal operating permit program (see 60 FR 55460 dated November 1, 1995).

EPA determines which sources are subject to the federal operating permit requirements based on their ''potential to emit.'' Under Rule 370, Santa Barbara County sources that would otherwise be required to obtain a federal permit would be exempt if their ''actual'' 12-month (rolling average) emissions are less than 50 percent of their ''potential to emit.'' Sources below specified emission levels would also be exempt. Federal recordkeeping and reporting requirements will vary for businesses with different operational levels.

On August 10, 1995, the California Air Resources Board (CARB) submitted to EPA, on behalf of the District, the District's prohibitory rule (Rule 370), adopted on June 15, 1995. On September 20, 1995, EPA reviewed this rule for completeness and found that the rule conformed to the completeness criteria in 40 CFR part 51, Appendix V.

### II. EPA Evaluation and Action

The EPA has evaluated the submitted rule and has determined that it is consistent with 40 CFR part 70 and with section 112(l) of the Act. The following is a brief analysis of the key regulatory revisions being acted on in today's notice. (Please refer to the Technical Support Document for a complete analysis of the submission.)

#### *A. Analysis of Submission*

Rule 370 ''Potential to Emit—Limitation for Part 70 Sources''

On August 10, 1995, CARB submitted for approval into Santa Barbara's portion of the California State Implementation Plan (SIP), Rule 370 ''Potential to Emit—Limitations for Part 70 Sources.'' This Rule creates a streamlined process for limiting the potential to emit of sources that emit less than 50 percent of major source levels but whose potential to emit is above those levels. Sources complying with this Rule will have federally-enforceable limits on their potential to emit and will avoid being subject to Title V.

The basic requirement for approving into the SIP rules to limit potential to emit is that the limits in the rule are practically enforceable. For a discussion of general principle of practical enforceability, see Memorandum from John Seitz to Regional Air Directors, ''Options for Limiting the Potential to Emit (PTE) of a Stationary source Under section 112 and Title V of the Clean Air Act (Act),'' January 25, 1995, found in the docket for this rulemaking. Rule 370 meets the requirements for practical enforceability for limiting potential to emit through general prohibitory rules in SIPs. Please refer to the TSD for further analysis of the Rule.

CARB also submitted Rule 370 for approval under section 112(l) of the Act. The request for approval under section 112 (l) is necessary because the proposed SIP approval discussed above only provides a mechanism for controlling criteria pollutants. EPA has determined that the practical enforceability criterion for SIPs is also appropriate for evaluating and approving Rule 370 under section 112(l). In addition, Rule 370 must meet the statutory criteria under section 112(l)(5). For a discussion of EPA's authority to approve rules under section 112(l), see 59 FR 60944 (November 29, 1994).

EPA proposes approval of Rule 370 under section 112(l) because the Rule meets all of the approval criteria specified in section 112(l)(5) of the Act. EPA believes Rule 370 contains adequate authority to assure compliance with section 112 because it does not waive any section 112 requirements applicable to non-major sources. Regarding adequate resources, Rule 370 is a supporting element of the district's title V program which has demonstrated adequate funding. Furthermore, EPA believes that Rule 370 provides for an expeditious schedule for assuring compliance because it provides a streamlined approval that allows sources to establish limits on potential to emit and avoid being subject to a federal Clean Air Act requirement applicable on a particular date. Finally, Rule 370 is consistent with the objectives of the section 112 program

because its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. The EPA believes this purpose is consistent with the overall intent of section 112.

Rule 370 is modeled on the California model prohibitory rule developed by the California Association of Air Pollution Control Officers, CARB and EPA. In its agreement on the model rule, EPA expressed certain understandings and caveats. See letter from Lydia Wegman, Deputy Director, Office of Air Quality Planning and Standards, U.S. EPA to Peter Venturini, Chief, Stationary Source Division, CARB, January 11, 1995. A copy of this letter is in the docket for this rulemaking.

*Part 70 Requirements*

The definition of ''potential to emit'' in Santa Barbara's Rule 370 is consistent with the definition of ''potential to emit'' as defined in 40 CFR 70.2 ''Definitions—Potential to Emit.'' The requirements of Rule 370 do not conflict or overlap with those of Santa Barbara's interim-approved Part 70 operating permit program.

*B. Final Action and Implications*

The EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is also proposing approval of Santa Barbara's rule revision should adverse or critical comments be filed. The final action will be effective December 15, 1997, unless, within 30 days of its publication, adverse or critical comments are received.

If EPA receives such comments, the final action would be withdrawn before the effective date by publishing a subsequent notice. This action would then serve as a proposed rule only. All public comments received after this action would then be addressed in a subsequent final rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 15, 1997.

Rule 370 ''Potential to Emit—Limitations for Part 70 Sources''

EPA is promulgating approval of Rule 370 submitted to EPA by CARB on August 10, 1995.

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

## III. Administrative Requirements

*A. Docket*

Copies of Santa Barbara's submittal and other information relied upon for the direct final actions are contained in docket number CA–SB–97–001 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this direct final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

*B. Regulatory Flexibility Act*

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

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address revisions to Santa Barbara's existing operating permits program that was submitted to satisfy the requirements of 40 CFR part 70. Because these approval actions do not impose any new requirements, they do not have a significant impact on any small entities affected.

*C. Unfunded Mandates*

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

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

*D. Executive Order 12866*

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

*E. Submission to Congress and the General Accounting Office*

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

*F. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: September 26, 1997.

**Felicia Marcus,**

*Regional Administrator.*

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

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(224)(i)(E) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(224) * * *

(i) * * *

(E) Santa Barbara County Air Pollution Control District.

(*1*) Amended Rule 370 adopted on June 15, 1995.

* * * * *

[FR Doc. 97–27265 Filed 10–14–97; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MD 040–3017a; FRL–5906–1]**

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Yeast Manufacturing, Screen Printing, Expandable Polystyrene Operations, and Bakeries

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland on July 12, 1995. These revisions establish reasonable available control technology (RACT) volatile organic compound (VOC) emission reduction requirements for yeast manufacturing, screen printing, expandable polystyrene operations (EPOs), and bakeries throughout the State of Maryland. The intended effect of this action is to approve these amendments to the Maryland SIP, in accordance with the SIP submittal and revision provisions of the Clean Air Act (the Act). This action is being taken under section 110 of the Act.

**DATES:** This final rule is effective December 15, 1997, unless by November 14, 1997, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland 21224.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Donahue, (215) 566–2095, at the EPA Region III office address listed above, or via e-mail at donahue.carolyn@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

**SUPPLEMENTARY INFORMATION:** On July 12, 1995, the Maryland Department of the Environment (MDE) submitted new regulations to EPA as SIP revisions. These regulations control VOC emissions throughout the state. MDE submitted these SIP revision requests pursuant to the rate-of-progress (ROP) and RACT requirements of section 182 and 184 of the Act. Specifically, Maryland has adopted VOC control measures for yeast manufacturing, screen printing, EPOs and bakeries.

#### Background

Section 182(b)(1) of the Act requires states with ozone nonattainment areas classified as moderate or above to reduce VOC emissions 15% from 1990 baseline levels. States were required to achieve the 15% VOC emission reduction by 1996. This ROP requirement, known as the 15% plan, was due to EPA as a SIP revision by November 15, 1993.

In Maryland, 15% plans were required for the Baltimore severe ozone nonattainment area, the Maryland portion of the Philadelphia severe ozone nonattainment area, and the Maryland portion of the Washington, DC serious ozone nonattainment area. Maryland submitted the required 15% plans to EPA as SIP revisions on July 12, 1995. In these 15% plans, Maryland takes credit for the emission reductions achieved through the VOC regulations that Maryland submitted as SIP revisions on July 12, 1995, including Maryland's yeast manufacturing, screen printing, EPO, and bakery regulations. Furthermore, the VOC emission reductions achieved by these regulations are needed to achieve the 15% reduction in the Baltimore plan.

Section 184(b)(1)(B) of the Act requires areas in the Ozone Transport Region (OTR) to implement RACT regulations for all VOC sources that have the potential to emit 50 TPY or more. In addition, section 182(b)(2) requires states to implement RACT regulations on all ''major'' sources of VOC in moderate or above ozone nonattainment areas. Major VOC sources are those with the potential to emit at least 100 TPY in moderate areas, 50 TPY in serious areas, and 25 TPY in severe areas. Because Maryland is in the OTR, the State is required to implement RACT regulations for all sources with the potential to emit 50 TPY or more, throughout the state. Furthermore, in Maryland's severe ozone nonattainment areas, RACT is required for all VOC sources with the potential to emit 25 TPY or more. States were required to submit these RACT regulations to EPA as SIP revisions by November 15, 1992. Sources were required to comply with RACT by May 31, 1995.

Maryland submitted a generic VOC RACT regulation to EPA as a SIP revision on April 5, 1991. On June 8, 1993, Maryland submitted amendments to this regulation to EPA as a SIP revision. The generic RACT regulation does not contain any specific emission limitations or requirements for major sources, but instead allows the establishment of RACT through the SIP revision process for individual sources or source categories. Maryland's July 12, 1995 SIP revision submittals address the RACT requirement for the following four source categories: yeast manufacturing, screen printing, expandable polystyrene operations, and bakeries.

#### Summary of SIP Revisions

*Control of VOC Emissions from Yeast Manufacturing (COMAR 26.11.19.17)*

General Provisions

This new regulation establishes standards for controlling VOC emissions from yeast manufacturing. This regulation establishes definitions for the following terms: ''fermentation batch,'' ''first generation fermenter,'' ''stock fermenter,'' ''trade fermenter,'' and ''yeast manufacturing installation.'' An owner or operator of a yeast manufacturing installation at a premises that has a potential to emit of 25 or more tons/year from all yeast manufacturing installations is subject to this regulation. Compliance with this regulation was

required by May 15, 1995. This regulation does not apply to a fermentation batch of any variety which comprises less than 1% of the total annual yeast production by weight.

General Requirements

A person subject to this rule may not discharge VOC emissions from a yeast manufacturing installation in excess of the following concentrations: 100 parts per million (ppm) for trade fermenters, 150 ppm for first generation fermenters, and 300 ppm for stock fermenters. Compliance with these emission limits will be based on average undiluted VOC concentration during the time of a fermentation batch. Any yeast manufacturing installation not subject to these limits must monitor temperature, pH, and sugar content of the batch to minimize VOC emissions. This temperature must be controlled so that it is between 75 °F and 100 °F, and the pH must be between 3.5 and 7.5.

Compliance and Testing

Stack tests, used to calculate emissions concentrations from at least four different effluent samples per hour for the duration of the fermentation batch, and continuous process monitors, used to generate batch average concentrations for each installation, determine compliance with this regulation. Stack tests must be performed at least once every four years after an initial stack test, which was required to have been conducted before October 1, 1995. A test protocol must be submitted to MDE at least 30 days before the tests are conducted.

Reporting Requirements

Quarterly reports on process monitoring data must be submitted to MDE by the 20th of the month after the end of each calendar quarter. Stack test reports must be submitted to MDE within 60 days after each test.

*EPA Evaluation:* The controls on fermenters in Maryland's regulation reduce VOC emissions from yeast manufacturing installations. Maryland's recordkeeping and reporting provisions ensure that this regulation is enforceable. Therefore, this regulation, which will achieve significant VOC emission reductions from yeast manufacturing operations in Maryland, is fully approvable.

*Control of VOC Emissions From Screen Printing (COMAR 26.11.19.18)*

General Provisions

This revision establishes VOC controls for screen printers. This regulation establishes definitions for the following terms: ''Acid/etch resist ink,'' ''anoprint ink,'' ''back-up coating,'' ''clear coating,'' ''conductive ink,'' ''electroluminescent ink,'' ''exterior illuminated sign,'' ''haze removal,'' ''ink removal,'' ''maximum VOC content,'' ''plastic card manufacturing installation,'' ''plywood sign coating,'' ''screen printing,'' ''screen printing installation,'' ''screen reclamation,'' ''specialty inks,'' and ''untreated sign paper.''

This regulation applies to an owner or operator of a screen printing installation or plastic card manufacturing installation, or who coats plywood used for signs, at a premises that has total actual VOC emissions from all screen printing, plastic card manufacturing, and plywood coating installations of 20 or more pounds/day. These standards apply to a person who prints or coats a substrate in conjunction with or in preparation for screen printing. However, this regulation does not apply to adhesives used for screen printing.

General Requirements

A person subject to this regulation may not cause or permit the discharge of VOC unless the following requirements are observed, where lb/gal is pounds per gallon and g/l is grams per liter.

For Screen Printing:

MAXIMUM ALLOWABLE VOC CONTENT IN LB/GAL (G/L) OF THE INK (AS APPLIED)

| Product or substrate | Up to 11/15/94 | On or after 11/15/94 and up to 7/15/95 | On or after 7/15/95 |
|---|---|---|---|
| Paper | 5.6 (672) | 5.6 (672) | 3.3 (396) |
| Untreated sign paper | 5.6 (672) | 5.6 (672) | 5.6 (672) |
| Glass | 3.3 (396) | 3.3 (396) | 3.3 (396) |
| Metal | 5.8 (696) | 3.3 (396) | 3.3 (396) |
| Plastic or vinyl, other than plastic cards | 6.7 (804) | 6.7 (804) | 3.3 (396) |
| Reflective sheeting | 6.7 (804) | 6.7 (804) | 3.3 (396) |
| Textile/imprinted garments | 3.3 (396) | 3.3 (396) | 3.3 (396) |
| Fine arts/serigraph | 6.7 (804) | 6.7 (804) | 3.3 (396) |
| Pressure sensitive decals | 6.7 (804) | 6.7 (804) | 3.3 (396) |
| Plywood/wood | 5.0 (600) | 5.0 (600) | 3.3 (396) |

A person subject to this regulation is in compliance if a control device that regulates VOC emissions from the screen printing dryer by no less than 90% overall is installed.

For Plywood Sign Coating:

MAXIMUM ALLOWABLE VOC CONTENT IN LB/GAL (G/L) OF THE COATING (AS APPLIED)

| Coating | Before 11/15/94 | On or after 11/15/94 |
|---|---|---|
| Back-up | 1.0 (120) | 1.0 (120) |
| Prime | 4.5 (540) | 1.5 (180) |
| Main | 5.0 (600) | 2.5 (300) |
| Clear | 4.5 (540) | 3.3 (396) |

For Plastic Card Manufacturing:

a. The VOC content of any ink or coating as applied may not exceed 6.2 lb/gal (744 g/l) until November 15, 1994, and 4.0 lb/gal (479 g/l) after July 15, 1995.

b. The isopropyl alcohol content of the fountain solution used in any offset lithographic printing on a plastic card may not exceed 12% until December 31, 1994, and 8.5% after December 31, 1994. If used, this fountain solution

must be refrigerated to 55 °F and monitored by a temperature indicator mounted on the tray holding the fountain solution.

From Use of Specialty Inks, Clear Coating, and Ink and Haze Removal or Screen Reclamation:

MAXIMUM ALLOWABLE VOC CONTENT IN LB/GAL (G/L) OF INK (AS APPLIED), INK REMOVAL OR RECLAMATION PRODUCT

| Specialty ink | Before 11/15/94 | On or after 11/15/94 |
|---|---|---|
| Acid/etch | 4.7 (564) | 3.3 (396) |
| Anoprint | 6.2 (744) | 3.1 (372) |
| Conductive | 8.0 (960) | 8.0 (960) |
| Electroluminescent | 8.0 (960) | 8.0 (960) |
| Clear coating product or substrate: | | |
| Exterior illuminated signs | 7.5 (900) | 3.3 (396) |
| Other than exterior illuminated signs | 6.7 (804) | 3.3 (396) |
| Removal or reclamation product: | | |
| Screen reclamation | N/A | 1.0 (120) |
| Ink removal | N/A | 3.3 (390) |
| Haze removal | N/A | 4.0 (480) |

Record Keeping Requirements

Records must be maintained for at least 3 years. These records must report the total amount of ink, coating, or other material containing VOC used each month, the VOC content of the ink, coating or other material used, and the total monthly amount of isopropyl alcohol used in plastic card manufacturing installations. The records must be available to MDE upon request.

A person who uses a control device to achieve compliance with this regulation must have performed a stack test by July 15, 1995 demonstrating compliance, and include the VOC concentrations at the inlet and outlet of the control device. A test report must be submitted to MDE within 60 days of the stack test.

*EPA Evaluation:* The controls on VOC content of inks in screen printing operations in Maryland's regulation reduce VOC emissions from these operations. In addition, testing requirements on the control device will further reduce emissions from this source category. Finally, Maryland's recordkeeping and reporting provisions ensure that this regulation is enforceable. Therefore, this regulation, which will achieve significant VOC emission reductions from screen printing in Maryland, is fully approvable.

*Control of VOC Emissions From Expandable Polystyrene Operations (COMAR 26.11.19.19)*

General Provisions

This new regulation establishes standards for controlling VOC emissions from EPOs. This regulation establishes definitions for the following terms: ''expandable polystyrene operation,'' ''blowing agent,'' ''preexpander,'' ''recycled expanded polystyrene,'' and ''reduced VOC content beads.'' This regulation is applicable to anyone operating an EPO where the total actual VOC emissions from all EPOs on the premises is 20 or more pounds/day and 10 or more tons/year.

General and Testing Requirements

An EPO operator subject to this regulation may not emit VOC unless one of the following control measures is used:

a. 10% or more recycled expanded polystyrene is used in the incoming feed at all times, and reduced VOC content beads are used;
b. A VOC collection and destruction system is installed to control emissions from the preexpander by 85% or more overall;
c. Duct emissions from the preexpander into the fire box of fuel-burning equipment.

Spills of polystyrene beads must be collected and any spilled material will be put in a closed container to prevent and suppress emissions.

If a control device is used, a stack test must be performed to measure the VOC concentration at the inlet and outlet of the device. The initial test must be performed no later than 90 days after start-up, and additional stack tests shall be performed at least once every 3 years beginning 3 years after the initial test. A report shall be submitted to MDE within 60 days of each stack test.

Record Keeping Requirements

Monthly records of the total weight of beads used and the VOC content of the beads must be maintained for at least 3 years. An EPO operator not subject to this regulation must maintain records of the daily and annual weight of the beads and the VOC content of these beads, and make these records available to MDE upon request.

*EPA Evaluation:* The controls on different components of EPOs in Maryland's regulation reduce VOC emissions from these operations. In addition, testing requirements on the control device will further reduce emissions from this source category. Finally, Maryland's recordkeeping and reporting provisions ensure that this regulation is enforceable. Therefore, this regulation, which will achieve significant VOC emission reductions from EPOs in Maryland, is fully approvable.

*Control of VOC Emissions From Commercial Bakery Ovens (COMAR 26.11.19.21)*

General Provisions

This revision establishes new standards for bakery operations. The new regulation applies to a person who owns or operates a bakery oven which was built after 1942 and has a total potential to emit of at least 25 tons of VOC per year. This regulation applies to the largest oven at such a facility. This regulation establishes definitions for the following terms: ''commercial bakery oven,'' ''fermentation time,'' ''yeast percentage,'' and ''Yt value.''

General Requirements

After May 15, 1996, a person who owns or operates a bakery oven that exceeds the average production tonnage of finished bread, rolls or other yeast-raised products and Yt value listed below may not emit VOC unless the emissions from the oven are directly exhausted into a control device designed to reduce VOC emissions by 80% or more.

a. 10,000 tons with a Yt value greater than 11.0;
b. 15,000 tons with a Yt value between 8.1 and 11.0;
c. 22,500 tons with a Yt value less than 5.0 and 8.0;
d. 28,000 tons with a Yt value less than 5.0.

These control devices were required to have been installed by July 15, 1995.

Requirements for Innovative Control Methods

Innovative methods to control VOC emissions can be used on commercial bakery ovens by the owner or operator if the methods are to the satisfaction of MDE. Also, the owner or operator of the oven must submit to MDE a design of a conventional control system as well as an expeditious schedule to construct the system should the innovative control method fail to reach compliance.

Reporting and Testing Requirements

A person who is subject to this regulation and installs a control device must perform a stack test within 90 days after start-up of the control device, and submit reports to MDE within 60 days after completing the stack test.

*EPA Evaluation:* The requirement to use control devices as well as innovative control methods on commercial bakery ovens will result in significant VOC emission reductions. Furthermore, Maryland's recordkeeping, reporting, and testing provisions ensure that this regulation is enforceable. Therefore, this regulation is fully approvable.

EPA is approving these SIP revisions without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective December 15, 1997 unless, by November 14, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 15, 1997.

**Final Action**

EPA is approving revisions to the Maryland SIP to establish VOC RACT requirements for bakeries, expandable polystyrene operations, yeast manufacturing, and screen printing operations. These regulations achieve fully enforceable VOC emission reductions.

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

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

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

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to revisions to the Maryland SIP establishing VOC control requirements for yeast manufacturing, screen printing, expandable polystyrene operations, and bakeries, must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 1997. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: September 26, 1997.

**Marcia E. Mulkey,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 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 V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(125) to read as follows:

**§ 52.1070 Identification of plan.**

* * * * *

(c) * * *

(125) Revisions to the Maryland State Implementation Plan submitted on July 12, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Four letters dated July 12, 1995 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound (VOC) regulations in Maryland's air quality regulations, COMAR 26.11.

(B) Regulations:

(*1*) Addition of new COMAR 26.11.19.17 Control of VOC Emissions from Yeast Manufacturing, adopted by the Secretary of the Environment on October 14, 1994 and effective on November 7, 1994, revisions adopted by the Secretary of the Environment on May 12, 1995, and effective on June 5, 1995, including the following:

(*i*) Addition of new COMAR 26.11.19.17.A Definitions, including definitions for the terms ''fermentation batch,'' ''first generation fermenter,'' ''stock fermenter,'' ''trade fermenter,'' and ''yeast manufacturing installation.''

(*ii*) Addition of new COMAR 26.11.19.17.B Applicability, Exemptions, and Compliance Date.

(*iii*) Addition of new COMAR 26.11.19.17.C Requirements for Yeast Manufacturing Installations.

(*iv*) Addition of new COMAR 26.11.19.17.D Determination of Compliance and Testing.

(*v*) Addition of new COMAR 26.11.19.17.E Reporting Requirements.

(*vi*) Amendment to COMAR 26.11.19.17.C(3), pertaining to limits for temperature and pH.

(*vii*) Amendment to COMAR 26.11.19.17.D(3), pertaining to stack test dates.

(*2*) Addition of new COMAR 26.11.19.18 Control of VOC Emissions from Screen Printing, adopted by the Secretary of the Environment on October 14, 1994 and effective on November 7, 1994, revisions adopted by the Secretary of the Environment on May 16, 1995 and effective on June 5, 1995, including the following:

(*i*) Addition of new COMAR 26.11.19.18.A, including definitions for the terms ''acid/etch resist ink,'' ''anoprint ink,'' ''back-up coating,'' ''clear coating,'' ''conductive ink,'' ''electroluminescent ink,'' ''exterior illuminated sign,'' ''haze removal,'' ''ink removal,'' ''maximum VOC content,'' ''plastic card manufacturing installation,'' ''plywood sign coating,'' ''screen printing,'' ''screen printing installation,'' ''screen reclamation,'' ''specialty inks.''

(*ii*) Addition of new COMAR 26.11.19.18.B Applicability.

(*iii*) Addition of new COMAR 26.11.19.18.C General Requirements for Screen Printing.

(*iv*) Addition of new COMAR 26.11.19.18.D General Requirements for Plywood Sign Coating.

(*v*) Addition of new COMAR 26.11.19.18.E General Requirements for Plastic Card Manufacturing Installations.

(*vi*) Addition of new COMAR 26.11.19.18.F Control of VOC Emissions from the Use of Specialty Inks.

(*vii*) Addition of new COMAR 26.11.19.18.G Control of VOC Emissions from Clear Coating Operations.

(*viii*) Addition of new COMAR 26.11.19.18.H Control of VOC Emissions from Ink and Haze Removal and Screen Reclamation.

(*ix*) Addition of new COMAR 26.11.19.18.I.

(*x*) Addition of new COMAR 26.11.19.18.A(17), definition for the term ''untreated sign paper.''

(*xi*) Addition of new COMAR 26.11.19.18.C(2), replacing previous § C(2).

(*xii*) Addition of new COMAR 26.11.19.18.C(3) Use of Control Devices.

(*xiii*) Addition of new COMAR 26.11.19.18.E(2)(b), replacing previous § E(2)(b).

(*xiv*) Addition of new COMAR 26.11.19.18.I Record Keeping, replacing the previous § I.

(*3*) Addition of new COMAR 26.11.19.19 Control of VOC Emissions from Expandable Polystyrene Operations, adopted by the Secretary of the Environment on June 9, 1995, and effective on July 3, 1995, including the following:

(*i*) Addition of new COMAR 26.11.19.19.A Definitions.

(*ii*) Addition of new COMAR 26.11.19.19.B Terms Defined, including definitions for the terms ''expandable polystyrene operation (EPO),'' ''blowing agent,'' ''preexpander,'' ''recycled expanded polystyrene,'' and ''reduced VOC content beads.''

(*iii*) Addition of new COMAR 26.11.19.19.C Applicability.

(*iv*) Addition of new COMAR 26.11.19.19.D General Requirements.

(*v*) Addition of new COMAR 26.11.19.19.E Testing Requirements.

(*vi*) Addition of new COMAR 26.11.19.19.F Record Keeping.

(*4*) Addition of new COMAR 26.11.19.21, Control of VOC Emissions from Commercial Bakery Ovens, adopted by the Secretary of the Environment on June 9, 1995, and effective on July 3, 1995.

(*i*) Addition of new COMAR 26.11.19.21.A Definitions.

(*ii*) Addition of new COMAR 26.11.19.21.B Terms Defined, including definitions for the terms ''commercial bakery oven,'' ''fermentation time,'' ''yeast percentage,'' and ''Yt value.''

(*iii*) Addition of new COMAR 26.11.19.21.C Applicability and Exemptions.

(*iv*) Addition of new COMAR 26.11.19.21.D General Requirements.

(*v*) Addition of new COMAR 26.11.19.21.E Use of Innovative Control Methods.

(*vi*) Addition of new COMAR 26.11.19.21.F Reporting and Testing Requirements.

(ii) Additional material.

(A) Remainder of July 12, 1995 Maryland State submittals pertaining to COMAR 26.11.19.21, .17, .18, and .19.

* * * * *

[FR Doc. 97–27260 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 42 CFR Part 51

**RIN 0905–AD99**

## Substance Abuse and Mental Health Services Administration; Requirements Applicable to Protection and Advocacy of Individuals with Mental Illness; Final Rule

**AGENCY:** Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

**ACTION:** Final rule.

**SUMMARY:** On December 14, 1994, the Department of Health and Human Services (Department or HHS) published a Notice of Proposed Rulemaking to comply with the requirements of section 116 of the Protection and Advocacy for Mentally III Individuals Act of 1986 (Act) (42 U.S.C. 10801 *et seq.*) which required that the Secretary promulgate regulations for the implementation of authorized activities of Protection and Advocacy (P&A) Systems to protect and advocate the rights of individuals with mental illness. The Department is issuing this final rule to implement Titles I and III of the Act.

These regulations will govern activities carried out by the P&A systems under the Act. The rule includes: definitions; basic

requirements regarding determination of, eligibility for and use of allotments, grant administration, eligibility for protection and advocacy services, annual and financial status reports, and remedial actions; and requirements regarding program administration, priorities, the conduct of P&A activities, access of the P&As to residents, facilities and records and confidentiality.

**DATES:** Effective Date: This regulation is effective November 14, 1997 except for the information collection requirements in sections 51.8, 51.10, 51.23 and 51.25. These sections will become effective upon approval under the Paperwork Reduction Act. A notice of approval will appear in the **Federal Register**.

*Comments:* The Department is soliciting comments on one particular section as described under section 51.22(2) in the preamble relating to representation on the governing board. To ensure consideration, comments must be submitted on or before December 15, 1997 to: Director, Center for Mental Health Services, 5600 Fishers Lane, Room 15–105, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carole Schauer, Program Officer, Protection and Advocacy for Individuals with Mental Illness Program, Center for Mental Health Services, 5600 Fishers Lane, Room 15C–26, Rockville, Maryland 20857; telephone (301) 443–3667 (Voice), (301) 443–9006 (TTY). These are not toll-free numbers. This document is available in accessible formats (cassette tape, braille, large print or computer disk) upon request at the Center for Mental Health Services (CMHS) Knowledge Exchange Network (KEN) at (800) 789–2647 or http://www.mentalhealth.org/.

**SUPPLEMENTARY INFORMATION:**

## Program History

In 1975, HHS established a program pursuant to Part C of the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) (42 U.S.C. 6041, *et seq.*), providing formula grant support to the Protection and Advocacy Systems designated by each State to protect and advocate the rights of persons with developmental disabilities. This program is presently administered by the Administration on Developmental Disabilities (ADD), in the Administration on Children and Families.

Since 1986 the Department has provided additional formula grant funds to the same State-designated P&A systems to protect and advocate the rights of individuals with mental illness pursuant to the Act, as amended. The 1988 Amendments changed all references to ''mentally ill individuals'' in the Act to read ''individuals with mental illness,'' but did not change the name of the Act itself. For purposes of this regulation, the program is referred to as Protection and Advocacy for Individuals with Mental Illness (PAIMI). This program is administered by the Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA).

These regulations will govern activities carried out by the P&A systems under the Act to protect and advocate the rights of individuals with mental illness. ADD has also amended its regulations governing P&A system operations under the DD Act to implement recent amendments. To the greatest extent possible the agencies have attempted to make both sets of regulations consistent.

Segments of the regulation published by ADD on September 30, 1996 (*See* 51 FR 51142 (September 30, 1996)) have been incorporated into the PAIMI regulation. The Department's goal is to ensure that all facets of the P&A system administered by the Department are subject to the same requirements. The Department hopes that in making the regulations as consistent as possible (given the minor differences between the statutes), the P&A will be able to carry out their responsibilities more effectively.

This approach is consistent with methods of legal analysis as well. A basic principle of statutory construction is that where statutes govern similar substantive areas, and affect similar classes of individuals, courts often attempt to construe such statutes *in pari materia* (meaning, on like subject matter) and might interpret certain provisions of the DD Act as applying to the Act as well. According to a leading treatise:

> ''[The] guiding principle * * * [in determining whether statutes are *in pari materia*] is that if it is natural and reasonable to think that the understanding of members of the legislature or persons to be affected by a statute, be [sic] influenced by another statute, then a court called upon to construe the act in question should also allow its understanding to be similarly influenced.'' Sutherland Stat. Const. 51.03 (4th Ed.).

In the present case, Congress appears to have been more than ''influenced'' by the DD Act. The legislative history of the Act states:

> [T]he Committee chose to utilize the existing Protection and Advocacy Agencies established under the Developmental Disabilities Assistance and Bill of Rights Act as the eligible system. This will require them to extend their existing services in order to protect and advocate for mentally ill persons.

Sen. Rep. No. 99–109 at p. 7, *reprinted in* 1986 U.S. Code Cong. and Admin. News at 1361, 1367. In fact, the PAIMI Act explicitly cross-references the DD Act in defining the eligible system (42 U.S.C. 10802(2)). Accordingly, the Department has attempted to make both regulations as consistent as possible in places where the language of the Act supports the inclusion of a particular regulatory provision, and where it makes sense programmatically to have similar guidance issued to both parts of the system.

## Description of the PAIMI Program

The Act authorizes formula grant allotments to be awarded to P&A systems designated by the Governor in each State to protect the rights of and advocate for individuals with mental illness. The allotments are to be used to pursue administrative, legal, and other appropriate remedies to redress complaints of abuse, neglect, and rights violations and to protect and advocate the rights of individuals with mental illness through activities to ensure the enforcement of the Constitution, and Federal and State statutes.

The P&As have the authority to: (1) protect and advocate the rights for persons with mental illness, and (2) investigate reports of abuse and neglect in facilities that care for or treat individuals with mental illness. P&As may also address issues which arise during transportation to or admission or 90 days after discharge from such facilities. Individuals eligible for services are those who have a significant mental illness or emotional impairment and who live in residential facilities. These facilities, which may be public or private, include hospitals, nursing homes, semi-independent or supervised community facilities, homeless shelters, jails and prisons. P&As have special legal authority to access public and private facilities, residents and clients, and records for the purpose of conducting independent investigations of incidents of abuse and neglect.

Each P&A has a governing authority or board of directors with members who broadly represent and are knowledgeable about the needs of its clients. Also, they each have an Advisory Council to advise the P&A system on policies and priorities to be carried out in protecting and advocating the rights of individuals with mental illness. Sixty percent of the council is comprised of recipients or former recipients of mental health services or families of such persons.

**Notice of Proposed Rulemaking**

The Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 14, 1994 (59 FR 64367–64378). Interested persons were given 60 days in which to send written comments regarding the proposed rules. Comments were received from 54 organizations and individuals. Most respondents were from P&A programs; others included individuals, State chapters of the Alliance for the Mentally Ill, and State/county mental health providers. Comments were received from the following national organizations: the National Alliance for the Mentally Ill, the National Association of State Mental Health Program Directors, the Federation of Families for Children's Mental Health, and the National Association of Protection and Advocacy Systems (NAPAS).

All written comments were analyzed and form the basis for changes which the Department has made in this final rule.

**Summary of Public Comments and the Department Response**

In general, most respondents felt that the proposed regulations provided valuable guidance and would be beneficial in eliminating needless controversy. The majority of respondents want one source of comprehensive guidance applicable to both the PAIMI and the Protection and Advocacy for Persons with Developmental Disabilities (PADD) programs. Most P&A respondents concurred with the comments submitted by NAPAS requesting greater specificity regarding the authority of the P&A systems to gain access to records, to facilities and the residents to conduct full investigations, e.g., to access records as the result of observations during monitoring activities; to conduct investigations and review records of clients routinely subjected to seclusion and restraint; to access jails and prisons; and to expand system access in Federal facilities. P&As and others also sought clarification and conformity regarding the relationship of the Act to other P&A authorizing legislation and relevant Federal statutes. Some respondents had comments only on certain sections or addressed more general concerns such as revisions in eligibility. To the extent possible, the Department has revised the regulations to meet these concerns.

The Department has also made a number of changes in language for clarity and to accommodate adopted recommendations. Where appropriate, the phrases ''resident/patient'' and ''facility/hospital'' have been reduced to ''resident'' and to ''facility''; ''patient'' and ''hospital'' are included within the meaning of these terms.

All comments received were carefully considered. The discussion which follows includes a summary of all comments, the Department's responses to those comments, and a description of any changes that have been made in the final rule as a result of the comments. Substantive changes are identified under the appropriate sections, with the exception of some general comments discussed below.

Also, the Department worked with ADD to ensure that as permitted by the Act, the Department's requirements are identical or consistent with ADD requirements that implement the provisions of the DD Act.

**Regulations Applicable to Protection and Advocacy for Individuals With Mental Illness**

Several commenters suggested it would be useful to incorporate all of the statutory definitions into the regulations arguing that the regulations should provide more than just citations to relevant sections of the Act and that those sections should be restated or paraphrased in nontechnical language. The Department has incorporated much of the relevant statutory language into these regulations. The sections not incorporated were considered not relevant to providing clarification.

NAPAS and others recommended that the regulations be in accord with regulations promulgated under the DD Act to govern the PADD programs. The Department has coordinated development of these regulations with ADD to ensure conformity with their regulations and with the DD Act to the extent possible given the minor differences between the statutes and has appended language from relevant portions of the DD Act, specifically those that clarify the mandated activities of the system.

Two respondents asked that the definition of ''individuals with mental illness'' be expanded to parallel the broad protections offered by the Americans with Disabilities Act (ADA). The Department responds that the ADA definition is much broader and more complex than the definition provided within the Act; therefore, the Department believes it does not have the authority to expand the definition to this extent through regulation.

One commenter felt that the PAIMI program should expand eligibility for services to include children and youth receiving mental health services in nonresidential, community settings. The Department is not able, by regulation, to expand the legal mandate of the Act to include any populations, including children in nonresidential settings. However, the Department notes that children with serious emotional disorders are also eligible for services under the PADD program which has a much broader mandate and does include such settings.

Three commenters asked that the regulations contain a list of all P&As (name, address, phone) and spell out their authority. The Department responds that these regulations do spell out the authority of the P&As. A listing of all P&A systems is available from the CMHS Protection and Advocacy for Individuals with Mental Illness Program. The address and phone number of the program are given earlier in the preamble.

One commenter urged CMHS to review any annual evaluations performed on the P&As, particularly taking into account the views of primary consumers and families, and to implement appropriate corrective actions based on the findings. The Department responds that, in addition to reviewing the PAIMI program annual reports, CMHS conducts on-site monitoring and technical assistance reviews. At these visits, CMHS officials solicit commentary, both public and private. To further address concerns or criticisms, the regulations require that each P&A system establish a grievance procedure to assure that individuals with mental illness have full access to services of the system and, for individuals who have received or are receiving mental health services and family members of such individuals, to assure that the eligible system is operating in compliance with the provisions of the Act. (See § 51.25)

One commenter asked that the phrase ''mental health'' be deleted in all references to the system's advisory council. Inasmuch, as this phrase is not contained in the Act and the deletion of the phrase does not substantively change the regulation, the Department agrees to make this change throughout.

*Section 51.1 Scope*

One respondent felt that the purpose of the Act should be stated in 51.1. The Department responds that this has already been accomplished under the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections.

Several commenters recommended that this section apply to care or treatment facilities and other persons or authorities with whom the system may be interacting or impacting, and not just to the P&A systems. The Department

responds that these regulations apply to the operation of P&A systems. Although the regulations may have an indirect impact on private and public care or treatment facilities, through State licensing and regulatory authorities, only the P&A systems are subject to the regulations.

*Section 51.2 Definitions*

Several commenters recommended that the definition of *abuse* be included in the regulation and that it be expanded to include ''verbal, nonverbal, mental and emotional harassment and mental or psychological injury,'' The Department notes that in discussing abuse related to child abuse, the courts and Congress have included verbal, nonverbal, mental and emotional harassment and mental and psychological injury. (*See e.g.* 18 U.S.C. 3509.) This was done in recognition of the fact that such abuse has as much, and in many cases, even more lasting effect on individuals than physical abuse. The Department can do no less for individuals who are mentally ill, and therefore it is changing the regulation to add the definition of abuse as in the statute and to amend that definition to include ''verbal, non-verbal, mental and emotional harassment and psychological harm.''

Also, several commenters requested that the term ''violation of rights'' be added whenever the terms ''abuse'' and ''neglect'' are mentioned in the regulation. Some respondents contended that complaints regarding rights violations such as unlawful restraint, inappropriate medications, and denial of communication rights, freedom to practice religion, access to the electoral process, or freedom of association, should be included as specific examples. The Department believes it necessary to clarify the distinction between ''abuse'' and ''neglect'' and ''violation of rights'' because the statute draws a distinction between them granting to the systems the power to investigate ''abuse'' and ''neglect'' and to protect and advocate on behalf of the rights of individuals with mental illness. The Department believes that when an individual's rights as defined in the Bill of Rights for Persons with Mental Illness established by the President's Commission on Mental Health (Title II of the Act) are repeatedly and/or egregiously violated, this constitutes abuse. While the Bill of Rights provides useful guidance, it should not be considered full or limiting as to types of rights violations. It is not necessarily true, however, that every violation of a person's rights is in and of itself ''abuse'' as defined in the Act. The Department declines the opportunity, however, of defining the threshold at which a violation of an individual's rights constitutes abuse, leaving that decision to the systems which will have intimate knowledge of the situation based on its monitoring of facilities and its discussion with individuals with mental illness.

A large number of commenters felt that the definition of ''Care and Treatment'' should be broadened. They argued that the definition is too narrow to include all facilities providing 24-hour care, and that the current definition is more oriented to ''treatment'' than to care. Most asked to eliminate the term ''overnight care'' because it is too restrictive. The Department believes that the requirement that the facility provided overnight care meets the intent of the Act which is to restrict its eligibility to persons who are/were residents of facilities or who are/were within 90 days of discharge from such facilities. Overnight care serves only as a minimum requirement; covered facilities may provide up to 24-hour care.

Many others argued that the definition of *care* should include elements of traditional support services such as case management; accompanying patients to outpatient centers; medical appointments or day treatment centers; vocational training services; transportation; education programs; employment programs; and provision of food, water and clothing. The Department responds that, to the extent that any of the above-suggested inclusions are provided to individuals with mental illness in eligible care or treatment facilities, they should be considered as incorporated within the meaning of ''services to prevent, identify, reduce or stabilize mental illness or emotional impairment,'' which is used by the National Institute of Mental Health and the CMHS based on the survey format *Mental Health Service System Reports,* ''Data Standards For Mental Health Decision Support Systems,'' which was developed through consensus in the mental health field.

Several commenters suggested that the definition of ''Complaint'' should include both written and informal oral communications such as telephone calls (including anonymous calls) that, in the judgment of the system, state credible allegations of abuse, neglect or other violation of rights. Further, the *Alabama Disabilities Advocacy Program* v. *J.S. Tarwater Development Center, 894 F. Supp 424* (M.D. Ala. 1995) ruled that an anonymous telephone message alleging abuse at a facility constituted a valid ''complaint'' justifying access to records under the records access provisions of the Act. The court found that to require the complainants to divulge their names or reduce allegations to writing and sworn testimony or make charges of a particular nature would dilute the Act and too narrowly construe the complaint requirement. The Department has included written and oral communications in the definition. Also, the word ''report'' was added to have the same meaning as complaint. A complaint or report may be received from any source or individual.

The Act states that a P&A system has the authority to investigate incidents of abuse and neglect that are either reported to the system or where there is probable cause to believe that the incidents have taken place. The Department believes that media accounts and newspaper articles can be viewed as the equivalent of a complaint when they provide details about a specific incident of abuse or neglect. While such reports are not specifically directed at the P&A system, they are published with the expectation that public officials responsible for conditions will act to stop abuse. P&A systems have that role. This does not preclude a P&A system from acting on behalf of a unnamed client or on behalf of a class of people. (See § 51.6(f).)

A definition of *Designated Official* has been added for clarity, to conform with ADD regulatory definitions. This individual is accountable for the proper use of funds and conduct of the P&A system.

Many commenters asked that a definition of *Facility* be included and that it specifically include all types of community living arrangements. The Department agrees that a definition of ''Facility'' should be added, but does not agree that the definition include all types of community living arrangements. The intent of the Act was to focus only upon facilities that provide ''care or treatment,'' i.e., those facilities that provide overnight care accompanied by services to prevent, identify, reduce or stabilize mental illness or emotional impairment, including supportive services, even if only ''as needed'' or, under a contractual arrangement, up to 24-hour care.

The Department has added a definition of ''Full Investigation'' to clarify what an investigation entails and to conform to the PADD regulation. We note that while an investigation involves access to facilities, PAIMI systems have authority in their monitoring role to access facilities

regardless of whether or not a complaint has been registered or probable cause exits.

Several commenters asked that the definition of ''Individual with Mental Illness'' be included. The Department agrees that the definition would add clarity to the regulations on a substantive issue. It has added the definition provided in the Act, clarified as addressed below regarding jails, prisons and detention facilities.

Commenters requested that the regulations clarify whether P&As may serve prisoners with mental illness who are maintained within the general prison or jail population (not just the mental health units of such facilities) and who may receive mental health services from time to time. The Department concurs that a system may assist prisoners or detainees with mental illness who are maintained within the general prison or jail population and who may receive mental health services from time to time as well as those who are maintained in special mental health units. This language has been incorporated into the definition of ''Individual with Mental Illness.''

The Department would like to clarify some confusion in the statute with regard to jails and prisons. In section 102(3) of the Act jails and prisons are clearly listed as facilities. Yet section 102(4) in the definition of ''individual with mental illness,'' indicates that such a person includes an individual who has a mental illness and ''who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from a conviction for a criminal offense.'' Is the statute suggesting that if a person with a mental illness is convicted of a criminal offense and sentenced to a State or Federal jail or prison that provides care or treatment, that person is covered by the Act, but one confined to a municipal detention center that provides care or treatment is not covered? To clarify this ambiguity, the Department is expanding the definition of ''individuals with mental illness'' to include persons in a detention facility, jail or prison which provides overnight care or treatment, whether they have been convicted of a criminal offense or not, and whether the facility is municipal, State or Federal.

Others requested guidance on which, if any, juvenile detention facilities are included and whether juveniles with a mental illness who are serving sentences for conviction for a crime, are excluded if they are housed in a juvenile ''detention facility.'' The Department responds that juveniles with a mental illness who are in an overnight municipal detention facility, jail or prison which provides care or treatment are covered whether they have been convicted of a criminal offense or not.

Several respondents addressed the definition of ''Legal Guardian, Conservator and Legal Representative,'' One suggested that the phrase ''or agency empowered under State law to appoint and review such officers'' was confusing and should be eliminated. Others asked that, to avoid conflicts of interest, a legal guardian should not include a family member with whom the mentally ill person resides who is also the payee and responsible for conducting the business of the person. The Department responds that it does not intend to supersede State laws regarding which agency may appoint and review guardianships nor will it mandate for States whom they shall name as guardian.

Some felt that the restriction on officials responsible for the provision of health and mental health services in the definition of *Legal Guardain* did not go far enough because those same officials often have authority to appoint others as conservators. The Department agrees in this instance, and will change the definition to include the phrase ''or their designees.'' The Department reiterates that a legal guardian for the purposes of this regulation is an individual who is appointed by the appropriate State powers to be a legal guardian for the individual and who has the authority to consent to health/mental health care or treatment for the individual with mental illness.

Other comments were in support of not including: guardians *ad litem* appointed for limited and specific purposes other than health/mental health care and treatment; representative payees; persons appointed during probate proceedings as administrator or executor of the estate; and lawyers representing persons in divorce proceedings, tax hearings or in criminal matters unrelated to mental health status. The Department agrees that all of the above are restricted within the current definition.

One respondent asked whether the definition included parents of minor children. The Department responds that natural or adoptive parents are legal guardians unless the State has appointed another legal guardian under applicable State law.

Several commenters suggested that inappropriate confinement or placement in a facility should be included under ''Neglect.'' The Department understands the comment to be about confinement, and it believes that treatment should be based on principles of accepted practices of quality mental health care. If a person with a mental illness is confined or placed in a facility with disregard to the principles of accepted practice, such confinement could be abuse or neglect.

One respondent called for certain rights of consumers to be included such as the provision of palatable food, adequate bathroom breaks, access to medication, allowance for arrangements to be made for ongoing care of pets, etc. The Department responds that the Act does not define ''rights'' but rather provides in Title II, a Bill of Rights (''Restatement of Bill of Rights for Mental Health Patients'') and recommends that States, in establishing laws that protect and serve individuals with mental illness, take into account these recommendations.

A large number of commenters requested that a discussion of probable cause be moved to the definition section. The Department agrees and has done so. Others suggested that the phrase ''or may be'' should be inserted in the probable cause definition to amplify ''has been subject to abuse or neglect'' stating that this would be consistent with Congressional intent that the P&A systems ensure the protection of individuals with mental illness. The Department agrees and has included the phrase ''or may be at significant risk of being subject to abuse or neglect'' in the new definition.

In addition, a large number of commenters supported the proposal that *probable casue* be defined as a belief based solely on the independent judgment of the system (advocate, attorney, or other person authorized to act on behalf of the system). Commenters argued further that it be made clear that the system is not required to disclose the basis of its probable cause finding to a facility or to any other third party; their determination should not be subject to review by a facility, authority, or Court or some other third party. The Department agrees that the determination of whether sufficient probable cause exists shall be based on the independent judgment of the P&A system (that is, the judgment of the advocate, attorney, or other person authorized to act on behalf of the P&A system); however, it is outside of the Department's purview to give sole discretion to the P&A system in this matter. The Department does not have the authority, by regulation, to insulate a P&A system from having to articulate the basis of its probable cause determination when requested.

In several places, the statute balances the need to maintain the confidentiality of individual records with the need to protect an individual from abuse and neglect. In general, the statute requires consent before any records are released to the P&A. However, in certain circumstances where the individual does not have a guardian, or where the guardian is unavailable or refuses to act), the P&A may obtain records without consent of the responsible party, if there is probable cause to believe that the individual has been or may be subject to abuse and neglect. In these situations, the facilities may be required to violate State law in order to provide the P&A with the records to which the statute and these regulations give them access. In the Department's view this is a very serious matter that requires a careful balancing of all of the interests represented here. Certainly, therefore, it is reasonable to expect that the system may be required to demonstrate that there was an adequate basis to justify the release of confidential records without consent.

However, the Department understands the difficulty the P&A systems confront in these situations. The P&A systems often receive complaints from individuals who fear reprisal if they come forward. If the P&A systems are required to disclose the names or other identifying information of those individuals who contacted the P&A with complaints about abuse and neglect, it is likely that far fewer people will come forward. This will severely impair the ability of the P&A systems to carry out statutorily mandated functions. Accordingly, the Department has added language to the regulation in section 51.45(a)(1)(iii) which makes clear that the P&A system must keep confidential information regarding individuals who report incidents of abuse or neglect, or who furnish information that forms the basis for a determination of probable cause.

One commenter believed that ''reasonable suspicion'' should be used instead of ''probable cause'' arguing that it would provide a lower threshold for inquiry. The term ''probable cause'' is used in the Act.

A comment was made that the definition of ''System'' should be clarified so that when the regulations say ''the system shall have the authority and access to * * * '' it is readily understood as meaning all authorized employees of that system. This suggestion was countered by a number of State mental health facility operators who said that only attorneys should have access to patients and not other PAIMI program advocates. The Department responds that the Act grants access to the PAIMI program. Thus anyone acting on behalf of the system is to be granted access to all areas of the facility which are used by residents or accessible to residents.

**Subart A—Basic Requirements**

*Section 51.3 Formula for Determining Allotments*

One commenter recommended that the formula for determining the amount of allotments be revised. The Department responds that it cannot change the current language of the law by regulation.

*Section 51.5 Eligibility for Allotments*

A commenter under NPRM section 51.27 felt that the system should be obligated to budget for training. The Department agrees that the system should budget for training, but does not wish to regulate this matter. The Department does require an annual report that includes a PAIMI budget.

One respondent asked for clarification regarding who is required to submit the assurances. The commenter noted that the system is authorized to provide the assurances directly to CMHS but that the ''supplement and not supplant'' assurance be signed by the Governor before being submitted by the system. It was recommended that paragraph (d) be deleted, and that the nonsupplanting assurance be included with the assurances described in paragraph (c), Another commenter suggested that there be one set of assurances for an entire P&A system, rather than viewing PAIMI as an independent program which is simply housed with PADD programs. The Department wishes to clarify that the *system* shall submit and sign *all* assurances *but* the ''supplement and not supplant'' assurance must bear a gubernatorial signature. This assurance may be a copy of an earlier similar assurance submitted to ADD as long as it can reasonably be construed as covering the PAIMI program as well. Any future ''supplement and not supplant'' assurances shall explicitly refer to the PAIMI program.

*Section 51.6 Use of allotments*

Almost half of the commenters urged that the regulations clarify whether or not a P&A system has standing to take legal action in its own name. It was explained that mechanisms to protect individual confidentiality are not foolproof, and that facility residents too often fear retaliation from their care providers as a result of their participation in a lawsuit concerning institutional conditions or other matters. Another reason for enabling P&A systems to have independent standing is that, unfortunately, the credibility of an individual with a diagnosis of mental illness is all too often automatically questioned. In addition, it is reported that very often persons with mental illness who wish to play a direct role in a lawsuit are unable to do so because their legally authorized representative refuses to consent. These respondents claim that it is extremely time consuming and costly to have to litigate the question of standing before being able to proceed to the merits of a case. They maintain that potential defendants might settle matters more quickly, prior to the initiation of legal action, if they knew that the P&A system itself might bring the suit and not the resident.

The Department agrees in part and disagrees in part. The concept of ''standing'' derives from Article III of the Constitution. Article III limits the ''judicial power'' of the United States to the resolution of ''cases'' and ''controversies.'' In various cases addressing the issue of standing, the Supreme Court has held that ''at an irreducible minimum. Article III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' and the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision'.'' *See Valley Forge Christian College* v. *Americans United for Separation of Church and State.* 454 U.S. 464 (1982). Thus, the issue of standing is a basic jurisdictional issue that has been left to the judiciary to determine based on the facts and circumstances of a particular case.

In promulgating regulations, the Secretary must act within the bounds of her authority and develop rules that are consistent with the language of the statute. The Act doe not contain any provision that would provide the Secretary with sufficient authority to, by regulation, grant a right of standing that is not explicitly noted in the statute. The Department, however, points out that the legislative history of the 1994 DD Act Amendments (Sen. Rep. No. 103–120, 103rd Cong., 2d sess., 39–40, reprinted in 1994 U.S. Code Cong. and Admins. News at 164, 202–203), strongly supports the view that, without showing injury to itself, a P&A system does have standing to bring suit on behalf of persons with disabilities. Although Congress declined to amend the DD Act to insert a right of standing, the report stated that ''the current statute is clear that P&A systems have

standing to pursue legal remedies to ensure the protection of and advocacy for the rights of individuals with developmental disabilities within the state.''

Further, the following courts have affirmed the P&A systems independent standing: *Alabama Disabilities Advocacy Program* v. *J.S. Tarwater Development Center,* No. 95–T–385–N (M.D. Ala. July 6, 1996); *Rubenstein* v. *Benedictine Hospital,* 790 F. Supp. 396 (N.D. N.Y. 1992); *Goldstien* v. *Coughlin,* 83 F.R.D 613 (W.D.N.Y. 1979); *Hershberger* v. *Missouri Protection and Advocacy Services, Inc.*, No. 48169 (MO Ct. of Appeals, August 2, 1994).

In light of the report language and the case law cited above, while the Department cannot offer standing in regulations, it can and does permit systems to use funds for the costs incurred in bringing lawsuits in its own right and has added this provision at 51.6(f).

*Section 51.7 Eligibility for Protection and Advocacy Services*

Several commenters requested that the definition of ''Individual with Mental Illness'' should be included in this section as well as in the definition section. The Department has incorporated the definition in the Definition section of this regulation (section 51.2) and feels that this is sufficient.

*Section 51.7(a)(2)*

Department staff recommended that all of the requirements for eligibility for eligibility for P&A services be incorporated into the regulations. Paragraph (2) regarding the 90-day post discharge requirement as stated in section 105(a) of the Act has been added to address eligibility requirements.

It was requested that the regulations clarify whether PAIMI programs may address *any* rights violations that occur within 90-days of discharge from a facility, or whether such violations must be related to the care of treatment provided by the discharging facility. The Department responds that the Act itself does not restrict the nature of advocacy services which may be provided during the 90-day post-discharge period, but the legislative history shows that the general intent of Congress was that the 90-day post-discharge period was primarily to enable redress against facilities which discharge persons without providing appropriate community follow-up and housing services.

Several commenters supported the section of the regulation that allows P&A systems to address issues which occurred within the 90-day post-discharge period, even though they may be brought to their attention after expiration of the 90-day period. The Department agrees that neither the Act nor the final regulations place a time limitation on the authority of the P&A system to address complaints of abuse or neglect that occurred during the 90-day post-discharge period.

*Section 51.7(a)(3)*

One commenter recommended that this section be modified to enable requests for representation in Federal and other facilities by a family member, friend or other concerned party acting on behalf of an individual with mental illness who, by reason of incapacity or otherwise, is unable to request services him/herself. It was further recommended that P&As be obligated to initiate a preliminary investigation upon receipt of a complaint from a family member. While the Department agrees that family members and, in fact, anyone, should be able to initiate a complaint or report to the PAIMI program, the intent of this regulation is to meet the special limitations of P&A authority in Federal facilities and to distinguish between persons who may make a report and those who are legally authorized to actually request or consent to representation by the P&A. Only the individual with mental illness, or, for individuals lacking capacity to consent, a legally authorized representative—as defined in the regulation—can request or consent to representation by the P&A.

*Section 51.7(b)*

One commenter asked that the word ''procedures'' in this section be changed to read ''acts or omissions'' which have subjected the individual to abuse or neglect or otherwise violated his/her rights. It was argued that in one State there are literally hundreds of individuals who are under civil commitment orders and being held in State facilities solely by reason of the failure of the public mental health system to provide them with adequate discharge planning. The commenter found that the most effective strategy is to challenge the civil commitment order and/or to file a petition for discharge through the probate court. The regulation would suggest that the system only has authority to undertake these actions when there is a procedural, as opposed to a substantive, violation. The Department agrees and will change the wording of the regulation as suggested.

*Section 51.8 Annual Reports*

Subparagraphs (2), (3) and (4) of section 51.8 of the NPRM were removed to enable the Department more flexibility regarding report requirements. The Annual Reports will be implemented under the legislative authority pursuant to section 105(a)(7) of the Act (U.S.C. 10805(a)(7), not regulatory.

*Section 51.9 Financial Reports*

This section was deleted because the Financial Status Report requirement is included under section 51.4 Grants Administration Requirements, 45 CFR Part 74–Administration of Grants.

*Section 51.10 Remedial Actions*

In response to Department staff concerns about the lack of clear requirements about review and monitoring activities of grantees, additional language was added to strengthen requirements regarding Department requests for information and documentation, corrective action plans and ongoing implementation status reports.

**Subpart B—Program Administration and Priorities**

*Section 51.21 Contracts for Program Operations*

*Section 51.21(b)*

A few respondents recommended that organizations with which the PAIMI program contracts should be only those with proven knowledge about mental illness and the service system. The Department agrees that PAIMI program contractors, in their capacity to perform protection and advocacy activities, should demonstrate experience in working with individuals with mental illness and has added this language to the regulation.

*Section 51.21(b)(3)(viii)*

To conform with requirements which have been added at 51.27(c) that P&As provide training for staff to conduct ''full investigations,'' a similar provision has been inserted here to ensure that PAIMI service provider contractors must also provide such training.

*Section 51.22 Governing Authority*

*Section 51.22(a)*

Department staff suggested that the requirement in the Act regarding the establishment of program priorities and policies jointly with the advisory council be inserted here to strengthen the provision. It has been added.

*Sections 51.22(b) (1) and (2)*

The Department notes that the Act currently requires only that the governing board be composed of members ''who broadly represent or are knowledgeable about the needs of the individuals served by the system'' whereas the DD Act states that the board ''shall include individuals with developmental disabilities who are eligible for services, or have received or are receiving services, or family members, guardians, advocates, or authorized representatives of such individuals.'' The Act requires that only *one* individual on the governing board, specifically the Chair of the PAIMI Advisory Council, be an individual who has received or is receiving mental health services or a family member of such an individual.

Several respondents suggested that this regulation should be revised to read: ''an individual or family member who serves on a system's governing board in a representative capacity must have direct experience with the needs of clients served by the system.'' Another commenter recommended that at least 25 percent of the governing board's membership should be composed of persons nominated by consumer and family member organizations, who have demonstrated sustained leadership and commitment to achieving improvements in the system of care, that ''no individual may serve more than four successive years as a member of the governing authority,'' and that terms should be staggered. A small number of commenters wanted to add a requirement for the governing board to annually evaluate the performance of the P&A system director and the PAIMI director adding that as part of their evaluation, comments on performance and leadership from consumer and family member organizations within the State shall be solicited and the results of such evaluation be used as a basis for the establishment of any subsequent year's performance standards. The Department responds that it considers each of these suggestions as reasonable and good practice but does not wish to enforce *all* such specific policies through regulation.

The Department has sufficient evidence concerning governing board memberships to support the need to enhance the composition of P&A governing boards to balance the current inequitable representation of PAIMI client constituencies. Therefore, the Department is *proposing* to add language to the regulations requiring that the membership of the governing board shall include at least a 25 percent representation of individuals with mental illness and of family members of individuals with mental illness. *The Department solicits further comment on this issue.* Depending on the comments received, the Department may revise the section. To ensure consideration, comments must be submitted to the address given earlier in the preamble within 60 days after publication of this final rule.

The Department agrees with the need for rotational and limited number of board member terms and for board evaluation of the P&A system director; therefore, it has added such language. The term of office of a board member shall be for 4 years and the member may not be reappointed to the board for a 2-year period. Rotational and a limited number of terms of board members encourage recruitment of persons bringing new skills and ideas to the board, prevent bias and burnout, and permit more consumers to participate in governing the system. Annual evaluation of the P&A director by the board fosters performance accountability.

Section 105(c) of the Act states that the governing authority shall ''be responsible for the planning, design, implementation, and functioning of the system.'' The Department does encourage the P&A systems to develop operating policies that incorporate requirements that further encourage board membership policies to identify relevant criteria for member selection and qualifications, and for an annual review of the Executive Director's performance that takes into account the appraisals of relevant constituency groups.

*Section 51.23 Advisory Council*

*Section 51.23(a)*

The Department recommended that the authority and responsibility of the Advisory Councils be strengthened to ensure the ability to provide advice and recommendations to the P&A without being unduly influenced by the P&A. This independent critical eye from individuals served by the P&A can only improve its services. The Department inserted language requiring that the council provide ''independent'' advice on program policies and priorities.

*Section 51.23(b)*

One commenter suggested that individuals who have received or are receiving mental health services should appear first in the listing of the council's composition. The Department responds that for purposes of clarity the language should be consistent with the Act.

Several commenters wished to add a requirement in this section that advisory council members who are ''individuals from the public who are knowledgeable about mental illness'' must ''have demonstrated a substantial commitment to improving mental health services'' as a conditions of their membership. The Department agrees that such criteria is useful and inserted the language after ''mental illness'' in this section.

*Section 51.23(b)(1)*

A small number of commenters were concerned that, to ensure expertise about how the system is presently serving children and youth, at least one family member on the council should be the primary care giver for an individual who is currently a minor child or youth who is receiving or has received mental health services. To ensure the inclusion of knowledge and experience regarding children with serious emotional disturbances and the mental health services they need, such language was added to this section.

*Section 51.23(b)(3)*

Department staff recommended that an annual minimum number of advisory council meetings be required in order to allow the council sufficient time to conduct its business and provide advice on program policies and priorities. The Department has added language requiring that councils meet, at a minimum, no less than three times a year. This in no way should be considered limiting.

In response to the recommendation that governing board members be limited in the number of terms they serve, the Department believes this would also be useful for the advisory council. Rotational and a limited number of terms of council members would encourage recruitment of persons bringing new skills and ideas to the council, prevent bias and burnout, and permit more consumers to participate in advising the P&A. The Department agrees with the need for rotational and limited number of board member terms and for board evaluation of the P&A system director; therefore, it has added such language. The term of office of a board member shall be for 4 years and the member may not be reappointed to the board for a 2-year period.

*Section 51.23(c)*

There was a recommendation to require that status information and analysis be provided to advisory council members to address each of the following:

(1) Individual advocacy services, including case selection criteria, the

availability of monetary resources, and special problems and cultural barriers faced by individuals with mental illness who are multiply handicapped or who are members of racial or ethnic minorities in obtaining protection of their rights;

(2) Systemic factors, including

(a) the adequacy and coordination of information sharing with like organizations within the State and nationally; and

(b) the adequacy of State psychiatric consumer services, rights laws and their enforcement with regard to:

(i) managed care, HMOs, and similar community organization protections, and

(ii) State institutions or State-operated facilities.

The Department does not wish to require numerous specific items to be provided which impose additional burdens and are not contained in the Act. However, the Department believes that the P&A system should provide as much information as necessary to enable the council to perform their responsibilities efficiently and responsibly. If information such as identified above is readily available, then it should be provided. Also, nothing should prohibit council members who desire such detailed information from seeking it from the system or from national technical assistance resources. In line with the Department's initiative to implement program performance outcome measures, language has been added under 51.23(c) to require that program performance outcome evaluation results be provided to the advisory council.

*Section 51.23(d)*

It was recommended that reimbursement for the cost of day care for dependents of individuals with mental illness be extended to include minor children and youth without disabilities. The Department disagrees; the costs of day care can be reimbursed only for persons with children who have a serious emotional disturbance, because this enables participation by family members of such individuals in keeping with the intent of the Act. The term ''child care'' was added and the description for equivalent expenses was expanded to further clarify the requirement.

*Section 51.24 Program Priorities*

*Section 51.24(a)*

A modification was recommended whereby the advisory council would approve the PAIMI priorities and policies before being submitted to the governing authority for approval. The Department believes that section 105(c)(2) of the Act is very clear in saying that the governing authority is solely responsible for planning, design, implementation, and functioning of the system. It is also very clear that annual priorities of the system are to be developed jointly with the advisory council.

The Department believes that to ensure consideration of systemic and legislative needs and issues, P&A systems should include priorities for systemic and legislative activities in developing annual priorities and has added this requirement.

*Section 51.24(b)*

Another commenter asked that the requirement be expanded so that public commentary on a system's annual priorities include comments regarding the general operations of a P&A system. The Department responds that the requirement to obtain public commentary already includes commentary on general operations, i.e., activities of the P&A system, as a part of establishing the system's annual priorities.

*Section 51.25 Greivance procedure*

The Department modified this section to address the confusion in the use of two terms—''grievances'' and ''complaints.'' To conform with the Act, only the term ''grievance'' has been used.

*Section 51.25(a)(2)*

One commenter noted that the second class of complaint, which is to ''assure that the eligible P&A system is operating in compliance with the Act'' is confusing and needs clarification. The Department responds that this section requires the P&A system to address grievances about how it is operating and to ensure that its activities and policies meet the intent of the Act. Failure to conduct activities in accordance with the requirements of the law is a serious breach of public trust and this is a different issue than ensuring that clients or prospective clients have access to the services provided by the system.

A second commenter expressed reservations about the license provided by this regulation to stimulate ''generic'' grievances against a P&A system based on unfounded assertions that the P&A is not in compliance. The Department responds that inasmuch as P&As are funded with public monies, they must adhere to the statutory mandate and provide access to their constituencies and respond to questions or complaints concerning their activities. The Department believes that a P&A which is operating in accordance with these regulations will have no difficulty responding to generic grievances with respect to compliance with the Act.

*Section 51.25(b)(1)*

One respondent did not support a ''final review'' of grievances by the governing board. The Department strongly believes that the governing board should have final responsibility for resolving contentious grievances. Department staff recommended that language be added to require that in cases where the governing authority is the director of the P&A, a final review be done by a separate entity. It was explained that in State P&A agencies where the governing authority is a single person and may be the person to whom a grievance is directed, it is not appropriate for that person to review and make a final determination on the grievance. The Department agrees and has added language requiring that P&As provide for final review on appeal of grievance decisions to an independent board or a superior in cases when the governing authority is a single person.

*Section 51.25(b)(2)*

One respondent argued that since advisory councils do not have authority concerning policy and personnel issues, complaints received should be made to the governing authority, which is involved in policy and personnel issues. The Department wants to clarify that advisory councils are not involved in the grievance process. This requirement merely states that the system should report annually to the council summarizing the general nature of the complaints or grievances against the PAIMI program. The Department believes that such information is extremely relevant in developing the following year's priorities and objectives. However, no identifying information concerning clients or staff and no personal identifiers concerning the grievants should be included in any such reports.

One commenter asked that this requirement include: ''a trend analysis of the sources, issues, timeframes and other pertinent factors relating to grievances received.'' The Department does not wish to develop specific format and content requirements for these reports; the governing authority and Advisory Council should identify this for themselves.

*Section 51.25(b)(4)*

Responsive to concerns by Department staff that prospective clients, clients or persons denied

representation receive prompt notification about the grievance policy and the progress being made on their grievance, the Department has added a requirement that the P&A system establish as part of its grievance procedures timetables to ensure prompt notification.

*Section 51.26 Conflicts of Interest*

A small number of commenters suggested rewording the section as follows: ''further, conflicts of interest should consider the extent to which an individual's personal or political allegiances may inhibit, or appear to inhibit, the performance of a position or its attendant duties in the best interests of persons with a mental illness.'' While the Department appreciates the general concern being raised, it would not be useful for a Federal regulation to address such a consideration. The P&A systems may develop personnel policies which consider the extent to which an individual's experience contributes to the promotion and advocacy of individual rights.

*Section 51.27 Training*

One commenter suggested that training should be limited to topics consistent with carrying out activities under the Act. The Department agrees and believes that the language of the regulation as stated sufficiently communities this. However, responsive to demonstrated need and repeated requests from P&A system staffers, and in conformity with ADD, the Department has included under (c) a specific type of training thought to be essential to the effective implementation of P&A system activities, namely training to conduct full investigations.

Another respondent felt that the system should be obligated to budget and provide support for training as necessary to meet the established priorities. The Department responds that the system is required to have a staff ''which is trained or being trained'' and sets aside ''not more than 10 percent of its allotment to spend on technical assistance and training.'' The Department believes that training for staff is obligatory but that, for the most part, the nature of such training should be determined by the system to meet individual staff needs and any special foci of its annual goals and objectives. Additionally, the Department has added language at 51.23(c) requiring that the advisory council be provided fiscal data on the amount expended and projected for training of each the advisory council, governing board and staff.

Several respondents asked that the regulations require that families and consumers be involved in training and that such individuals also be involved in the planning and implementation of training for PAIMI advocates. The Department responds that the use of individuals with mental illness or family members of such individuals can be extremely valuable resources for PAIMI training but does not wish to require this by regulation.

One commenter felt that training on working with families should be extended to all support personnel working in the system. The Department will not require this but urges P&A systems to provide all necessary training to individual staff based upon an ongoing assessment of their needs.

Counter opinions felt that mandating specific kinds of training creates an intolerable situation for P&A systems with minimal resources and suggested that the language in paragraphs (a) and (b) be eliminated. The Department responds that this specific training is mandated by the Act and believes that there is justifiable cause for requiring it. The Department believes that every system employee should be provided with such training and that it is appropriate to require specialized training or ''refresher'' training as necessary.

*Sections 51.28–51.30 Reserved*

**Subpart C—Protection and Advocacy Services**

*Section 51.31 Conduct of Protection and Advocacy Activities*

*Section 51.31(a)*

A few commenters recommended that language on use of appropriate techniques and remedies, which originally appeared in section 51.32(a), would be more appropriate as an introduction to this section. The Department agrees and, in conformity with ADD regulatory structure, has moved this language to 51.31(a). Also, in response to commenters' suggestions in the definition section that the term ''violation of rights'' be added whenever ''abuse'' and ''neglect'' are used, the Department added language in this section indicating that appropriate remedies may be used to address abuse, neglect, or violation of rights.

*Section 51.31(b)*

Several commenters believed that the regulations did not directly address the potential for redundance with other statewide advocacy programs and felt that the PAIMI program should be required to coordinate and collaborate with any established, State-funded agency providing patient rights advocacy services. P&A system efforts should augment current services and not duplicate them. The Department notes that in having an assurance that forbids the State from using Federal funds to supplant the level of non-Federal funds, it effectively requires augmentation. (See section 51.5(d).) Also, the Department notes that the requirement for annual priority setting necessitates coordination with other advocacy groups and is accomplished, in part, by requesting and responding to public commentary. The Secretary further requires that annual reports of the PAIMI program identify other groups with whom it worked cooperatively on activities. Ongoing coordination and collaboration is absolutely encouraged by the Department.

To conform with ADD regulations, the Department has added a requirement that no policy or practice shall be implemented by the P&A system that restricts the remedies which may be sought on behalf of individuals with mental illness. This is to ensure that a P&A system use all the remedies, e.g., administrative and legal, it has available to redress complaints brought by clients.

*Section 51.31(c)*

Many commenters strongly supported the requirement that the PAIMI program establish an ''ongoing presence'' in residential mental health care facilities, but one respondent wanted it made clear that facilities have no obligation to provide office space, telephones, or other financial support to the system. The Department responds that the regulatory language does not imply any such obligations. The Department encourages the regular appearance and presence in facilities by PAIMI advocates but does not necessarily intend that on-site offices be maintained. However it is expected that facilities will provide space for unaccompanied private conversations with residents and clients.

*Section 51.31(d)(1)*

One commenter suggested that this section establish consistent policies regarding access to day rooms, living quarters, and treatment areas. The Department responds that this section includes interactions with residents or staff in all areas of facilities used by or accessible to residents. To ensure this, the Department will insert the phrase ''all areas of the facility which are used by residents or are accessible to residents'' in sections 51.42(b) and (c).

*Section 51.31(e)*

Department staff recommended that section 51.27(b) regarding training for individuals who are not program staff, contractors, board or council members be moved to section 51.31 because its content is more appropriate under the conduct of P&A activities. This has been done. A respondent felt that training in self-and peer-advocacy skills should be provided by the P&A system. Self-advocacy training involves teaching the mental health consumer skills, and providing support and assistance to present his or her views either about personal treatment or about the wider service needs, and peer-advocacy training involves providing mental health consumers with skills to support and assist other mental health consumers about personal treatment or about wider service needs. The Department agrees that such training is immensely valuable and may be provided but does not wish to mandate it.

*Section 51.31(f)*

One respondent noted that this regulation appears to authorize systemic advocacy and argued that P&A system activities should be limited exclusively to matters of abuse, neglect and rights violations. The Department does not agree. P&A systems are clearly authorized by section 101(b)(2)(A) of the Act to engage in systemic, and other types of advocacy activities, including the pursuit of administrative, legal and other appropriate remedies to ensure that the rights of individuals with mental illness are protected. One commenter believed ''that not enough attention is being paid by the P&A systems to Advocacy,'' that persons with mental illness need advocates who can plead for their just causes in public forums and before legislative executive bodies and government agencies, and that a separate section should be added to the regulation to address the advocacy role. The Department agrees that P&A systems shall carry out systemic advocacy—those efforts to implement changes in policies and practices of systems that impact persons with mental illness, and legislative activities—those involving monitoring, evaluating, and commenting upon the development and implementation of Federal, State, and local laws, regulations, plans, budgets, taxes and other actions which affect persons with mental illness. Legislative activities was addressed under section 51.6(b) of the NPRM, but has been moved here because the Department believes that system activities related to monitoring, evaluating and commenting on the development and implementation of Federal, State and local laws, etc., fit more appropriately under this section on conduct of P&A activities. The Department has also added language at paragraph (f) requiring P&A systems to address systemic activities.

*Section 51.31(g)*

A number of respondents asked that the regulations clarify that a probable cause determination of a PAIMI program may be based on information obtained from ''monitoring or other activities'' and that this be understood to apply to a wide range of similar activities. The Department agrees and has added language about ''monitoring and other activities'' and ''general conditions affecting health or safety'' under this paragraph.

*Section 51.31(h)*

This section was added to ensure equal applicability to PAIMI programs and to conform with identical provisions which appear in the DD Act and ADD regulations. This requirement assures that a State P&A system will not be hindered by State personnel or administrative policies in carrying out advocacy activities.

*Section 51.31(i)*

Two commenters asked that there be a provision stating that State laws which grant P&A systems greater access are not superseded by the Act. The Department agrees that where State laws give the system greater authority than these regulations, such laws shall prevail and has inserted subsection (i) to ensure equal applicability to PAIMI programs in conformity with provisions appearing in the DD and ADD regulations. Also, the Department has inserted language to make clear that State law must not diminish the authority of the Act.

*Section 51.32 Resolving Disputes*

*Section 51.32(a)*

For clarity, the first half of the NPRM language for this section has been moved to 51.31(a) The remainder of the original is in this section.

*Section 51.32(b)*

One commenter argued that the phrase ''disputes regarding a particular course of treatment'' should not be singled out from other disputes regarding a person's rights, particularly because, under both Federal and State law, there is an explicit right to refuse treatment under certain circumstances. The Department agrees that it does not appear useful to specify a particular type of dispute and will delete the phrase.

Another commenter noted that this provision might be used by hospitals and clinicians to require P&A systems to demonstrate that negotiation and mediation had been initiated and had proven unsuccessful before a legal action or even a formal administrative complaint could be initiated. The Department notes that under paragraph (d) the system has the authority to take action when it believes the administrative process is not resolving an issue within a reasonable period of time, and further that when the situation is an emergency, the system can bypass the administrative process. Further, paragraph (e) states that the Act ''imposes no additional burden respecting exhaustion of remedies'' and that the intent of this section is only that nonadversarial techniques be used for resolution ''whenever possible.''

Another respondent feared that the requirement to involve family members might discourage or prohibit eligible individuals from participating in a legal action. The Department responds that this section deals only with nonadversarial processes. The Department notes that under this subsection family members have the opportunity to participate in negotiations; however, individuals who are not under guardianship are legally competent to decline to have family members involved.

*Section 51.32(c) (d) and (e)*

A number of commenters disagreed with the provision that a PAIMI program should be required to ''exhaust all administrative remedies'' prior to initiating a legal action; only one respondent encouraged this interpretation. One commenter suggested that this requirement had been used by the Office of Attorney General as a tactic to delay action on cases: ''It is the client who cannot get services and whose health continues to deteriorate who suffers from this process.'' A large number of commenters recommended that the word ''all'' be deleted, arguing that exhaustion should be required only in circumstances where a clear administrative scheme exists. Others felt that the section should adopt the general principles of administrative law which relieve a party of the need to ''exhaust'' when such action would be ineffective or futile. It was further argued that this regulation could be construed to impose a higher burden on P&A systems to use administrative remedies and that the last sentence under (a) adequately addresses this

issue by encouraging P&A systems to use negotiation, conciliation, or mediation early in the protection and advocacy process.

The Department notes that the language which appeared in the NPRM is more restrictive than intended by the Act; the phrase ''in a Federal or State court'' was inadvertently left out of the phrase following ''legal action.'' Without this phrase, it might appear as though any kind of legal action would be affected. Since it is not intended that this requirement unnecessarily inhibit a P&A system from pursuing legal actions, the phrase, in Federal or State courts, has been reinserted. In addition, the Department has added phrases under (d) to clarify the intent that no additional burden is imposed where no administrative remedies exist and that a system is permitted to seek legal action after exhausting administrative remedies. The Department feels that, as amended, the regulation is reasonable, particularly when read together with the sentence which addresses the issue of ''reasonable time,'' and with paragraph (d) which states that the admonition does not apply to ''any legal action instituted to prevent or eliminate imminent serious harm to an individual with mental illness'' and with paragraph (e) which states that ''the Act imposes no additional burden respecting exhaustion of remedies.'' For purposes of clarity, the Department has added language to paragraph (e) requiring that a ''system shall be held to the standard of exhaustion of remedies provided under State and Federal law.''

*Section 51.33–51.40 Reserved*

**P&A Subpart D—Access to Records, Facilities and Individuals**

Many respondents urged that the regulations make clear that these requirements supersede all State statutory and common law prohibitions concerning P&A system access to records and that nothing in this part should be construed to limit the authority of a P&A to gain access to records. The Department responds that State law must not diminish the required authority of the Act and the P&A system may exercise its authority under State law where the authority exceeds the authority required by the Act. This requirement is set forth under 51.31 ''Conduct of P&A Activities.''

*Section 51.41 Access to records*

*Section 51.41(a)*

For purposes of clarity and consistency, the section ensuring access to records by all authorized agents of a system has been moved from 51.42(c) in the original NPRM and inserted here.

*Section 51.41(b)*

This paragraph was formerly section (a). All commentary submitted in response to items in former paragraph (a) are reproduced here as applicable to new paragraph (b). The definition of ''Probable Cause'' which formerly appeared as paragraph (b) in the NPRM has been moved to the Definitions section (51.2) for clarity and consistency and in response to many requests.

A large number of respondents believed that an incident of abuse or neglect should refer not only to a particular individual, but also to general conditions or problems that affect many or all individuals in a facility. They argued that neither the Act nor case law imposes an individual-specific probable cause requirement. The Department agrees and has provided for this under conduct of P&A activities in 51.31(g) by including general conditions affecting health or safety as well as in 51.41(b)(2)(iii) by including that a P&A system may determine that an individual with mental illness ''may be'' subject to abuse or neglect.

It was recommended by several commenters that the Department require a mandatory time frame of 3 days for the release of records, once authorization has been obtained, and that the P&A system be granted expedited access—24 hours—in certain emergency situations. They reported that uncooperative facilities have attempted to thwart an investigation by ''sitting on'' the records. The Department agrees that access must be provided promptly, and has inserted this in the regulation under paragraph (a). The Department does not wish to mandate a specific time frame for release of records but notes that Sections 51.32(c) and (d), which permit the system to seek legal action after exhausting administrative remedies, apply to circumstances regarding disputes concerning the delay or denial of access to records.

*Section 51.41(b)(2)(ii)*

A few respondents wanted clarification on whether permission from the guardian was necessary in order for a P&A system to access the records of a deceased person. They requested affirmation of their understanding that a P&A system may access records when, under State law, the relationship between a deceased person and a legal representative/guardian terminates at death. The Department responds that access to the records of a deceased person is governed by State law.

One respondent requested that the last phrase of this subparagraph be revised to clarify that neither State nor ''one of its political subdivisions'' may prohibit access to records. The Department agrees that the intent is to prohibit denial of access by the State or by any of its political subdivisions where there is probable cause and the State is the individual's guardian, and has added this language.

*Sections 51.41(b)(3)(i) (ii) and (iii)*

Many respondents noted that these subsections appear to require that the legal representative actually be contacted before a P&A system would be allowed to take independent action. They reported their experience that legal guardians often are unavailable for long periods of time, or refuse to communicate with the P&A system. The Department agrees that restricting the ability of the P&A system to act in circumstances when it has probable cause to believe that the health or safety of the individual with mental illness is in serious and immediate jeopardy and the legal representative is unavailable, would compromise the intent of this subsection, particularly in light of subparagraph (iii) which allows the P&A system to take action if the representative has filed or refused to act. The language will be changed to reflect the Department's intent that the system must have made a ''good faith effort'' but that contact is not required. P&A systems should be able to document efforts made to contact the representative of an individual and that these efforts are reasonably calculated to be effective in notifying the representative.

*Section 1.41(c)*

Many respondents noted that to conduct a full investigation, a P&A system should have access to all records whether written or retained in another medium, and whether draft or final document, including handwritten notes, video or audio tape recordings; electronic files or photographs; ''daily happenings'' sheets (changes in status, discharges, ward transfers); policy and procedures manuals maintained by a facility; court documents; emergency room records; quality assurance documents; personnel records; records of transporting entities; and physical and documentary evidence reviewed with related investigative findings. It is argued that without an opportunity to review information from various sources, there can be neither a full investigation nor a determination of whether the investigation of another agency or facility was sufficiently

thorough. The Department agrees that any or all of the above-named records may be considered relevant on a case-by-case basis, and that they all be considered under the current meaning of ''records.'' The Department has incorporated a number of items which clarify the intention that all records are to be accessible, but it has not included every single example.

One commenter was concerned that the regulations appear to allow access to records which in a number of States are confidential by law. This individual argued that system access to records should be granted only when the request is in compliance with the requirements set by State statutes. Another felt that the regulations exceeded the authority provided in the statute and went well beyond certain State statutes by providing access to in-house incident reports, certification and licensing reports, facility self-assessment reports, and financial records. Another felt that the following records should be exempt: records protected by the attorney-client privilege; reports prepared by individuals and entities performing certification or licensure reviews; reports prepared by professional accreditation organizations; and related assessments prepared by the facility, its staff, contractors or related entities. The Department does not agree. It is clearly the intent of the Act that the system have full access to ''all records of an individual'' pertaining to a full investigation of a report or complaint. The only exception noted [Senate Report 102–114, 102nd Congress, 1st Sess. 5, 1991] is the Joint Commission on Accreditation of Hospitals Report—peer review/medical review records. In order for the P&A system to carry out its mandate to protect the rights of individuals with mental illness and to investigate allegations of abuse or neglect in public and private facilities, they must be empowered to access information contained in all records relevant to such activities. In all circumstances where there is a direct conflict these regulations will supersede State law unless State law gives greater access. However, the Department does not intent to preempt State statutes that protect from disclosure the records produced by medical care evaluation or peer review committees. In addition, where there is a State statute that requires certain procedures with respect to personnel records, the Department expects P&As to follow these procedures.

Several respondents supported the importance of including records which do not only relate to the individual who is the object of a full investigation and felt it particularly important that the decision regarding which records are relevant be at the sole discretion of the system.

The Department agrees that the P&A system shall have ''reasonable access'' to all ''relevant'' records.

In order to be consistent with the Act at section 105(a)(4) that provides that a P&A shall ''have access to all records of—any individual,'' and the DD regulations, the Department has inserted the word ''individual'' before records in paragraphs (c) and (c)(1). Several commenters recommended that the system representatives be authorized to access records which are not in the actual possession of the facility but which are relevant to a full investigation. The Department agrees that the intent of the Act is to enable system access to all relevant records and will insert language under (c)(1) to ensure access to records maintained by or in the possession of the provider's agency or stored or maintained by any other entities (whether or not such entities actually produced the records). In obtaining such records, the system shall ensure that it has obtained appropriate, and specific, consent consistent with the requirements of section 105(a)(4) of the Act. Also, the P&A shall request of facilities that in requesting records from service providers or other facilities on residents that they indicate in the release form the records may be subject to review by a system. This language has been inserted in paragraph (c)(1).

*Section 51.41(c)(2)(iv)*

Several respondents requested that the following information and records also be identified as accessible to the P&A: supporting information relied upon in creating a record, including all information and records used or reviewed in preparing reports of abuse, neglect, injury or violations of rights such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings. The Department agrees and has included this language in (c)(2)(iv) except that violations of rights are covered only to the extent that they fall into the definition of abuse.

*Section 51.41(d)*

Two commenters believed that the authority to access the records of any persons who might have knowledge about alleged abuse or neglect should be included under Access to Records. The Department agrees but notes that P&A systems should have only ''reasonable access'' to such records and that access to records of facility service recipients be consistent with sections 105 and 106 of the Act. The Department has moved this section from 51.42(a)(3) to 51.41(d). What previously was (d) shall now be (e).

*Section 51.41(e)*

Two respondents mentioned that allowing a facility to charge fees for copying records imposes a financial strain on the P&A systems and asked that the regulations set limits to control these costs. In addition, they request that the regulations clarify that the system has the right to obtain and copy the actual records and not only to ''inspect'' records on site at the facility. The Department does not which to specify fee limitations, however, it notes that the P&A system may not be charged more than is ''reasonable'' according to prevailing local rates, and certainly not a rate higher than that charged any other service provider. Nothing shall prevent a system from negotiating a lower fee or no fee. The Department agrees that these regulations do authorize the P&A system to have access to the actual records and to make copies; simply allowing a system to ''view'' or ''inspect'' records is not sufficient. Because of the insertion of (c) noted above, the Department has moved this section to 51.41(e).

*Section 51.42 Access to Facilities and residents*

*Section 51.42(a)*

For clarity, this section has been moved from (c) to (a) where the Department felt it more appropriate.

*Section 51.42(b)*

All comments received responsive to section (a) as published in the NPRM are addressed here under (b).

One respondent mentioned that it would be helpful if the regulations clarified that children's facilities are also covered by the access and confidentiality of information provisions. Access is often held up by providers until the P&A system can convince them of the requirement that all records and information are confidential. The Department responds that children's care and treatment facilities are covered by these regulations and that the confidentiality requirements also apply.

On commenter argued that the regulation should require mandatory access for conducting full investigations of abuse or neglect. The Department responds that ''reasonable access'' is sufficient and means during all hours and shifts and not only on week days during facility ''business hours.'' Access

should be as prompt as necessary to conduct full investigations of abuse and neglect when an incident has been reported to the system or when the system has determined probable cause.

Two commenters believed that the authority to access the records of and interview any persons who might have knowledge about alleged abuse or neglect is too broad. The Department agrees in part that the authority is too broad pertaining to records, but not to interviews. The Department believes that the P&A has reasonable access and authority to interview and examine all relevant records of any facility service recipient (consistent with section 105 of the Act) or employee. The phrase ''other person who might have knowledge of the alleged abuse or neglect'' was deleted from this paragraph. Others urged that this authority also be included in the Access to Records provisions under section 51.41. The Department agrees and, with the caveats noted above, moved this authority to 51.41(d). Also, the Department added language to section 51.42(b) in conformity with the DD regulations indicating that as part of the access authority, the P&A has the opportunity to interview any facility service recipient, employee or other persons.

Several commenters suggested that P&A systems should not be required to provide notice to a facility that they are going to come to that facility to investigate an incident, and further, that P&A systems should be able to appear unannounced at a facility to investigate any report that is regarded as an emergency. The Department responds that the regulations do not require notice to be given a facility in advance of an investigation, but that in nonemergency instances such notice is reasonable. The Department agrees that in cases where a system believes that an individual with mental illness is, or may be, in imminent danger of serious harm, the system should investigate as quickly as possible and that, as written, the regulations do provide for prompt access.

Many commenters felt that P&A systems should have the right to access facilities ''whenever necessary'' to investigate alleged incidents of neglect and abuse. They maintained that reasonable access means access ''at any and all times necessary'' to conduct a full investigation of an incident, that the determination of ''reasonableness'' should reside with the P&A system, and the facility should be required to give access on request. If the facility wishes to contest the ''reasonableness,'' they should be authorized to do so only after the access has been granted, not before. The Department does not agree that the P&A system should have access at ALL times, but does accept the argument that access be granted ''all times necessary * * *'' to conduct a full investigation, and particularly when the system has determined ''probable cause'' that there is or may be imminent danger of serious abuse or neglect of an individual with mental illness. In addition, 51.42(c) provides for access to facility residents and to programs ''at reasonable times, which at a minimum shall include normal working hours and visiting hours.'' Access should not be limited only to business hours during weekdays, and should be to all areas used by residents or accessible to residents. Access is afforded the system under this section at (c)(2) in order to monitor compliance with respect to the rights and safety of residents. Finally, the Department has inserted the definition of ''Full Investigation'' to mean the ''* * * access to facilities, clients and records authorized under these regulations that is necessary for a P&A system to make a determination about whether an allegation of abuse or neglect is taking place or has taken place.''

Several respondents wished the regulations to include a requirement that facility residents be provided with the name, address, and telephone number of the P&A, uncensored access to writing materials, and private access to a telephone, for contacting the P&A. The Department agrees that such conditions are reasonable and it shall be considered applicable in this section under paragraph (c)(1), as revised.

Two commenters believed that the authority to monitor compliance with patient rights is too broad. The Department disagrees; monitoring compliance with patient rights is an opportunity to prevent incidents from occurring and to ensure that facility staff, as well as residents, understand what their rights are.

Several respondents recommended that P&A access not be hindered by facilities through requirements that monitoring, training, tours or other activities at the facility take place only with advance notice or in the presence or company of facility staff. Such practices deny the P&A system the ability to monitor for health, safety or environmental violations, or to observe the general living conditions of the residents.

One respondent suggested that, in the case of an actively aggressive resident, the P&A staff should be permitted to observe the client from a safe distance to verify the situational need. It was suggested that the P&A system be permitted to observe the client privately with the seclusion door open, to wait until the aggressive behavior has stopped, and to reschedule a visit at a time mutually agreeable to the parties, but not later than 48 hours and if the client is placed on one-to-one supervision, P&A staff should be permitted to observe or otherwise verify the behavior which calls for such supervision.

The Department responds that the intent of the regulations is to ensure that P&A systems have full unaccompanied access to residents and to all areas of the facility accessible to residents. In the interest of safety, access to certain nonpublic areas or to certain residents may be restricted by the facility but only in accordance with the procedures stipulated in section 51.43 (Denial or Delay of Access). The procedure for observation seems reasonable but the Department does not wish to provide detailed guidance in this instance for the conduct of P&A system activities. Policies and procedures should be developed by each P&A system itself to guide and coordinate advocacy activities.

One respondent suggested that the facility should make P&A literature, which explains P&A system services and the rights of the residents under the Act and other laws, available to residents and to legal guardians. Such materials should be made available upon admission to the facility and at regular intervals (at least quarterly) thereafter. The Department agrees that such literature should be available but cannot require facilities to do so. The Department notes that the P&A systems are to establish an ongoing presence in the facility and are authorized in this section under (c)(1) to provide information to residents.

*Section 51.42(d)*

Several commenters suggested that paragraph (d) be modified to specifically include persons who have legal guardians or conservators, arguing that the definition should be as expansive as possible in order to meet the clearly delineated purpose of the Act. One suggested that the regulations specify that, in response to a request for assistance from a minor or from an individual with a legal guardian, the P&A system may respond by visiting the requester, but may not institute formal negotiations. The Department agrees that such is the case and has added language to clarify that P&As have access to persons who have legal guardians, including both adults and minors, regardless of whether there is a State or local law or regulation which

restricts access to minors and adults with legal guardians. The Department has become award of several situations where a state or local requirement stood as an impediment to providing general information to individuals or monitoring general conditions of facilities. In these situations, the facilities argued that the P&A could not have any formal access to such individuals prior to obtaining consent from the individual's guardian or conservator. In the Department's view this prevents the P&As from carrying out their statutorily mandated duties, by preventing them from speaking with, and monitoring conditions affecting the safety of, individuals who have legal guardians—including minors. Accordingly, the Department intends that these regulations shall preempt any State or local laws and regulations which prohibit access to such individuals without obtaining consent from the guardians and has added such language at 51.42(e). The Department notes, however, that the P&A system may take no action on behalf of individuals with legal guardians or conservators without appropriate consent, except in emergency situations as discussed above. In all cases, the Department encourages facilities to provide general notice to guardians regarding the responsibilities of the P&A system, and inform them that it is possible that the P&As may speak informally with residents regarding their rights as well as conditions affecting their health or safety. Also, the Department has inserted into this paragraph the requirement that the P&A shall make every effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that the system will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian.

Although the regulations address the issue of privacy, many respondents felt that they should be strengthened to ensure private communications and unaccompanied access to clients, without having to provide a justification to the facility. It is felt that only by frequent personal contact, without the presence of institutional staff, can the P&A system effectively carry out its mission of protecting the rights and safety of residents. The Department agrees that private and unaccompanied access to clients and other residents should be provided and that, if denied, justification should be required under 51.43. The regulations incorporate a provision which specifies that the system generally shall be permitted unaccompanied access to meet and communicate privately with individuals, informally or formally, without the presence of facility staff.

*Section 51.42(f)*

In response to Department comments section 51.44 Access to Federal facilities and records in the original NPRM has been moved here. This change is to consolidate access requirements regarding facilities and records.

Several commenters argued that there is no reason to differentiate Federal from State facilities and that this section be deleted. One commenter suggested that the section be reworded to read: ''a system providing representation to individuals with mental illness in Federal facilities shall be accorded the same rights and authority accorded to that system in other public and private facilities.'' The Department disagrees. Principles of statutory interpretation require that Federal facilities be excluded if not specifically included. Congress clearly intended that there be a differentiation. The regulatory language is taken exactly from the 1991 amendments to the Act and the Department has no justifiable reason to change it through regulation.

*Section 51.43 Denial or Delay of Access*

The title of this section has been changed to accommodate recommendations received in the commentary regarding delay of access.

Several commenters argued that the section on denial of access serves no useful purpose, is addressed in the Resolving Disputes section, and should be deleted. The Department does not agree. Commenters expressed concern that this section would routinely invite denial or delay of access by facilities. The Department understands the concern, but responds that if and when access is denied to records, facilities and residents, it is critical that the P&A be protected from dealing with lengthy denial processes; therefore, this section requiring that a facility provide a *prompt* written justification when denying access will remain.

It was argued by several respondents that P&A systems should not have to provide any justification of their need to access the name, address and phone number of guardians, conservators or other legal representatives and that systems should have easy access to such information. If access is denied, the commenters recommend that the facility be required to provide written justification for the denial as promptly as possible, and no longer than three days. The Department agrees that the system has no requirement to provide justification concerning their need for access to information regarding guardians, conservators or legal representatives and that this information should be provided promptly. The regulation includes the word ''prompt,'' but the Department feels that a time-specific definition of ''promptness'' is not a matter for regulation.

Some commenters alleged that facilities often deny unaccompanied access to a resident when the authorized mental health professional determines it ''necessary for treatment purposes;'' they argue that such denial of access should be allowed only for specified, limited, and reasonable periods of time, and that the reasons for it should be noted in the resident's treatment plan. Additionally, they wanted the P&A system to be provided documentation in writing, to include the reasons for the denial of access to the resident. Others believed that a mental health professional should never be able to deny an individual with mental illness access to their attorney. The Department notes these concerns and responds that all denials of access are subject to the conditions of this subsection.

*Section 51.45 Confidentiality of Protection and Advocacy System Records*

For purposes of clarity, this section will apply to all records maintained in the possession of the system, and not only to ''client'' records. The word ''Client'' has been dropped from the title.

Two commenters noted that the confidentiality requirements proposed in this section are inconsistent with parallel requirements applicable under the DD Act and the Protection and Advocacy for Individual Rights program. The argument which these respondents made was that Congress intended that the parallel requirements of the three programs be applied in a consistent manner. The Department agrees and has made changes to these regulations to conform with the ADD regulatory language to establish uniform requirements.

Others asked that these requirements be applicable both to persons whom the system views as its ''client'' and to persons who have merely been provided general information or technical assistance by the system. The Department agrees and has added language under subparagraph (a)(1)(ii) and (3) of this section.

One commenter believed that a person or entity receiving information

from a P&A system should be advised of its confidential nature. This is particularly important when such information is being released to third parties. All clients should be told prior to consenting to release information that it may be disclosed to third parties in certain instances. The Department responds that these regulations require each P&A system to establish such policies with regard to release of information concerning clients and has addressed this under sections 51.45 (a)(2) and (a)(3).

One commenter stated that the principles of attorney-client privilege should generally govern P&A system confidentiality requirements. Such requirements should include a provision that the confidentiality requirements extend not just to clients, but to anyone who contacts a P&A system seeking advice or assistance. The Department agrees and has included regulatory language to address this under (a)(1)(ii) and (3).

One commenter believed that section 106(a) of the Act was intended to ensure that the system maintain the confidentiality of records in compliance with applicable State, Federal, and local laws and with the rules of any involved organization or institution which has legal responsibility for the records. The actual language of that sections states that ''an eligible system which * * * has access to records which, under Federal or State law, are required to be maintained in a confidential manner by a provider of mental health services shall * * * maintain the confidentiality of such records to the same extent as it required of the provider of such service.'' The Department has inserted ''under Federal or State laws'' at (a)(1)(i) in this section to clarify the issue. The Department requires that the highest standards of confidentiality be maintained so that all parties are assured of and have confidence in the security of the confidentiality of any records released to the P&A system.

Several commenters stated that confidentiality is essential and that the P&A system must be able to assure clients and informants that they will not reveal information about their cases or identities of clients. The Department agrees that confidentiality is essential but notes that a system may not provide complete and absolute assurance that no confidential materials will ever be viewed by other parties—albeit under the same strictures of obligation to confidentiality. The Department has added language under (a)(1)(iii) and (a)(3) in conformity with ADD regulations, to keep confidential the identity of individuals who report incidents of abuse and neglect and of individuals who furnish information that forms the basis for a probable cause determination.

For purposes of clarity, the paragraph that starts after (b)(2) ''For purposes of any periodic audit * * *'' and the following paragraph have been labeled paragraph (c) and (d) and moved to the end of section 51.45. One respondent was concerned that the language may be interpreted as giving investigative and enforcement agencies access to client records if such agencies have been called in to investigate a complaint against the P&A system. The Department responds that these regulations allow excess to client records in very limited circumstances and only to the Department and other authorized Federal or State officials for purposes of audit or for monitoring system compliance with applicable Federal or State laws and regulations. The purpose of obtaining information from client files is to determine whether P&A systems are spending grant funds appropriately. Official that have access to such information must keep it confidential to the maximum extent permitted by law and regulations. In response to comments received and to conform with the ADD regulations, the Department has inserted under paragraph (c) respecting the disclosure, under certain circumstances, of confidential information to Federal and State officials. This language clarifies that the purpose of obtaining personally identifiable client information is solely to determine that P&A systems are spending Federal grant funds in conformity with the Act and these regulations. Language has been included to indicate that officials who have access to such information must keep it confidential to the maximum extent permitted by law and regulations.

One commenter had concerns about the relationship between the confidentiality provisions of these regulations and those which are applicable to alcohol and other drug treatment records. The Department notes that this is a significant issue that is beyond and outside of the scope of these regulations and will require resolution within the context of 42 CFR Part 2, ''Confidentiality of Alcohol and Drug Abuse Patient Records.'' The conflict arises when consent cannot be obtained for the release of confidential information either because the person is not competent and does not have a guardian or because the person cannot be located. Under such circumstances the P&A system would have to petition the courts for an order to obtain the records. The Department has no response at this time and welcomes further commentary on this issue for consideration. Some respondents argued that there should be an absolute and clear Federal standard of confidentiality, one which does not refer to rules applicable to mental health service providers in a particular State. The Department responds that there currently is no Federal standard regarding the confidentiality of general medical records. Because most States have statutory requirements governing confidentiality of patient records, the Department does not wish to impose different requirements in this area.

*Section 51.46 Disclosing Information Obtained From a Provider of Mental Health Services*

Two commenters noted the error in the last sentence of paragraph (a) which states that such determination shall be provided at the time that the system's access to the information is ''denied.'' To correct this error, the word ''granted'' will be substituted for the word ''denied.''

**Impact Analysis**

*Executive Order 12866*

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

This final rule implements the 1991 reauthorization for the Protection and Advocacy for Mentally III Individuals Act of 1986 (Act) 42 U.S.C. 10801 *et seq.*). The regulations provide guidance on the implementation of authorized activities P&A systems to protect and advocate the rights of individuals with mental illness. These are final rules to implement Titles I and III of the Act, as amended. Authorized activities include investigation of incidents of abuse and neglect and the pursuit of legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with mental illness in facilities providing care or treatment. The regulations provide basic definitions and clarify the requirements of the Act.

The Department estimates that these regulations will not result in additional cost to the Federal Government, the

States, universities and any other organizations to which they may apply.

*Regulatory Flexibility Act of 1980*

Consistent with the Regulatory Flexibility Act [5 U.S.C. Ch. 6], the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities,'' an analysis describing the rule's impact on small entities is prepared. The primary impact of these regulations is on the States, which are not ''small entities'' within the meaning of the Act. However, they will affect small private institutions providing services to individuals with mental illness. This impact will be minimal in that the institutions will simply be subject to review at no cost when a complaint is made against them. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

*Paperwork Reduction Act*

This final rule contains collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* Protection and Advocacy of Individuals with Mental Illness—42 CFR Subchapter 51—FINAL RULE.

*Description:* Data to be reported are required by 42 U.S.C. 10805 and 10821 and will be used by the Secretary to determine grantee eligibility for allotments and to evaluate compliance with the Act. Additionally, data will be collected to publish annual reports that are submitted to the President, the Congress, and the National Council on Disabilities as required by 42 U.S.C. 10824 of the Act and 42 U.S.C. 6006 of the DD Act.

*Description of respondents:* Private and public grantees.

*Estimated Annual Reporting Burden:*

| | Annual number of respondents | Annual frequency | Average burden per response (hours) | Annual burden hours |
|---|---|---|---|---|
| Section 51.8 Program | 56 | 1 | ..... | ..... |
| Performance Report: | | | | |
| Part I | ..... | ..... | 33 | ..... |
| Part II | ..... | ..... | 2 | ..... |
| (Subtotal) | ..... | ..... | (35) | 1,960 |
| Section 51.8 Advisory Council Report | 56 | 1 | 10 | 560 |
| Section 51.10 Remedial Actions: | | | | |
| Corrective Action Plan | 6 | 1 | 8 | 48 |
| Implementation Status Report | 6 | 3 | 2 | 36 |
| Section 51.23(c) Reports, materials and fiscal data to Advisory Council | 56 | 1 | 1 | 56 |
| Section 51.25(b)(2) Grievance Procedure | 56 | 1 | .5 | 28 |
| Total | ..... | ..... | ..... | 2,688 |

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Substance Abuse and Mental Health Services Administration is providing the public with the opportunity to comment on the information collection requirements contained in this final rule. In order to fairly evaluate whether a collection of information should be approved by the Office of Management and Budget (OMB), the Paperwork Reduction Act requires that we solicit comments on:

- 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;
- the accuracy of the Agency's estimate of the burden of the proposed collection of information;
- 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 through the use of automated collection techniques or other forms of information technology.

Comments on the Paperwork requirement of this regulation should be sent to: Daniel J. Chenok, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503. Written comments should be received within 60 days of this notice.

**List of Subjects in 42 CFR Part 51**

Administrative practice and procedure, Grant programs—health programs. Grant programs—social programs, Health records, Mental health programs, Privacy, Reporting and recordkeeping requirements.

Dated: October 2, 1997.

**Donna E. Shalala,**

*Secretary.*

Accordingly, part 51 is added to title 42 of the Code of Federal Regulations to read as follows:

## PART 51—REQUIREMENTS APPLICABLE TO THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS PROGRAM

**Subpart C—Protection and Advocacy Services**



**Subpart D—Access to Records, Facilities and Individuals**



**Authority:** 42 U.S.C. 10801, *et seq.*

### § 51.1 Scope.

The provisions of this part apply to recipients of Federal assistance under the Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended.

### § 51.2 Definitions.

In addition to the definitions in section 102 of the Act, as amended, the following definitions apply:

*Abuse* means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with mental illness, and includes but is not limited to acts such as: rape or sexual assault; striking; the use of excessive force when placing an individual with mental illness in bodily restrains; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations; verbal, nonverbal, mental and emotional harassment; and any other practice which is likely to cause immediate physical or psychological harm or result in long-term harm if such practices continue.

*Act* means the Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended, also referred to as Protection and Advocacy for Individuals with Mental Illness Act.

*ADD* means the Administration on Developmental Disabilities within the Administration for Children and Families, Department of Health and Human Services.

*Care or Treatment* means services provided to prevent, identify, reduce or stabilize mental illness or emotional impairment such as mental health screening, evaluation, counseling, biomedical, behavioral and psychotherapies, supportive or other adjunctive therapies, medication supervision, special education and rehabilitation, even if only ''as needed'' or under a contractual arrangement.

*Center* or *CMHS* means the Center for Mental Health Services, a component of the Substance Abuse and Mental Health Services Administration.

*Complaint* includes, but is not limited to any report or communication, whether formal or informal, written or oral, received by the P&A system, including media accounts, newspaper articles, telephone calls (including anonymous calls) from any source alleging abuse or neglect of an individual with mental illness.

*Department* or *HHS* means the U.S. Department of Health and Human Services.

*Designated Official* is the State official or public or private entity empowered by the Governor or State legislature to be accountable for the proper use of funds by the P&A system.

*Director* means the Director of the Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, or his or her designee.

*Facility* includes any public or private residential setting that provides overnight care accompanied by treatment services. Facilities include, but are not limited to the following: general and psychiatric hospitals, nursing homes, board and care homes, community housing, juvenile detention facilities, homeless shelters, and jails and prisons, including all general areas as well as special mental health or forensic units.

*Fiscal Year* or *FY* means the Federal fiscal year (October 1–September 30) unless otherwise specified.

*Full Investigation* is based upon a complaint or a determination of probable cause and means the access to facilities, clients and records authorized under this part that is necessary for a P&A system to make a determination about whether an allegation of abuse or neglect is taking place or has taken place. Full investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.

*Governor* means the chief executive officer of the State, Territory or the District of Columbia, or his or her designee, who has been formally designated to act for the Governor in carrying out the requirements of the Act and this part.

*Individual with Mental Illness* means an individual who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State and

(1) Who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such impatient or resident is unknown;

(2) Who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility, or

(3) Who is involuntarily confined in a detention facility, jail or prison.

*Legal Guardian, Conservator, and Legal Representative* all mean an individual whose appointment is made and regularly reviewed by a State court or agency empowered under State law to appoint and review such officers, and having authority to consent to health/mental health care or treatment of an individual with mental illness. It does not include persons acting only as a representative payee, persons acting only to handle financial payments, attorneys or persons acting on behalf of an individual with mental illness only in individual legal matters, or officials responsible for the provision of health or mental health services to an individual with mental illness, or their designees.

*Neglect* means a negligent act or omission by an individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an individual with mental illness or which placed an individual with mental illness at risk of injury or death, and includes, but is not limited to, acts or omissions such as failure to: establish or carry out an appropriate individual program or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care; and the failure to provide a safe environment which also includes failure to maintain adequate numbers of appropriately trained staff.

*Private Entity* means a nonprofit or for-profit corporation, partnership or other nongovernmental organization.

*Probable cause* means reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

*Program* means activities carried out by the P&A system and operating as part of a P&A system to meet the requirements of the Act.

*Public Entity* means an organizational unit of a State or local government or a quasi-governmental entity with one or more governmental powers.

*System* means the organization or agency designated in a State to administer and operate a protection and advocacy program under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041, 6042) and thereby eligible to administer a program for individuals with mental illness.

## Subpart A—Basic Requirements

### § 51.3 Formula for determining allotments.

The Secretary shall make allotments to eligible Systems from amounts apportioned each year under the Act on the basis of a formula prescribed by the Secretary in accordance with the requirements of sections 112 and 113 of the Act (42 U.S.C. 10822 and 10823).

### § 51.4 Grants administration requirements.

The following parts of titles 42 and 45 CFR apply to grants funded under this part.

42 CFR Part 50, Subpart D.
45 CFR Part 16—Procedures of the Departmental Grant Appeal Board.
45 CFR Part 74—Administration of Grants.
45 CFR Part 75—Informal Grant Appeals Procedures.
45 CFR Part 76—Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace.
45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964.
45 CFR Part 81—Practice and Procedure for Hearings under Part 80 of This Title.
45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
45 CFR Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance.
45 CFR Part 91—Nondiscrimination on the Basis of Age in Education Programs and Activities Receiving Federal Financial Assistance from HHS.
45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
45 CFR Part 93—New Restrictions on Lobbying.
45 CFR Part 1386, subpart A.

### § 51.5 Eligibility for allotment.

(a) Federal financial assistance for protection and advocacy activities for individuals with mental illness will be given only to a System that has been established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041, *et seq.*) and designated in accordance with 45 CFR part 1386, subpart B.

(b) The P&A system must meet the requirements of sections 105 and 111 of the Act (42 U.S.C. 10805 and 10821) and that P&A system must be operational. Each system shall submit an application at the beginning of each PAIMI authorization period. This application shall contain at a minimum the program priorities and budget for the first year of the authorization period and the required assurances and certifications. Thereafter, the system shall submit yearly updates of the budget and program priorities for the upcoming fiscal year through its annual report.

(c) Written assurances of compliance with sections 105 and 111 of the Act (42 U.S.C. 10805 and 10821) and other requirements of the Act and this part shall be submitted by the P&A system in the format designated by the Director. These assurances will remain in effect for the period specified in the application for funds unless changes occur within the State which affect the functioning of the P&A system, in which case an amendment will be required 30 days prior to the effective date of the change. The P&A system shall also provide the Department the name of the designated official.

(d) The Governor's written assurance that the allotments made available under the Act will be used to supplement and not to supplant the level of non-Federal funds available in the State to protect and advocate the rights of individuals with mental illness shall be submitted by the P&A system. The Governor may provide this assurance along with the assurances provided to ADD under 45 CFR part 1386, as long as it can reasonably be construed as applying to the PAIMI program. Any future ''supplement and not supplant'' assurance shall explicitly refer to the PAIMI program.

### § 51.6 use of allotments.

(a) Allotments must be used to supplement and not to supplant the level of non-Federal funds available in the State to protect and advocate the rights of individuals with mental illness.

(b) Allotments may not be used to support lobbying activities to influence proposed or pending Federal legislation or appropriations. This restriction does not affect the right of any P&A system, organization or individual to petition Congress or any other government body or official using other resources.

(c) Allotments may not be used to produce or distribute written, audio or visual materials or publicity intended or designed to support or defeat any candidate for public office.

(d) If an eligible P&A system is a public entity, that P&A system shall not be required by the State to obligate more than five percent of its annual allotment for State oversight administrative expenses under this grant such as costs of internal or external evaluations, monitoring or auditing. This restriction does not include:

(1) Salaries, wages and benefits of program staff;

(2) Costs associated with attending governing board or advisory council meetings; or

(3) Expenses associated with the provision of training or technical assistance for staff, contractors, members of the governing board or advisory council.

(e) No more than ten percent of each annual allotment may be used for providing technical assistance and training, including travel expenses for staff, contractors, or members of the governing board or advisory council as defined in § 51.27.

(f) Allotments may be used to pay the otherwise allowable costs incurred by a P&A system in bringing lawsuits in its own right to redress incidents of abuse or neglect, discrimination, and other rights violations impacting on individuals with mental illness and when it appears on behalf of named plaintiffs or a class of plaintiffs for such purposes.

### § 51.7 Eligibility for protection and advocacy services.

In accordance with section 105(a)(1)(C) of the Act (42 U.S.C. 10805(a)(1)(C)) and the priorities established by the P&A system governing authority, together with the advisory council, pursuant to section 105(c)(2)(B) of the Act (42 U.S.C. 10805(c)(2)(B)), allotments may be used:

(a) To provide protection and advocacy services for:

(1) Individuals with mental illness as defined in 42 U.S.C. 10802(4) and 10805(a), including persons who report matters which occurred while they were individuals with mental illness;

(2) Persons who were individuals with mental illness who are residents of the State, but only with respect to matters which occur within 90 days after the date of the discharge of such individuals from a facility providing care or treatment; and

(3) Individuals with mental illness in Federal facilities rendering care or treatment who request representation by the eligible P&A system. Representation may be requested by an individual with mental illness, or by a legal guardian, conservator or legal representative.

(b) To provide representation of clients in civil commitment proceedings if the P&A system is acting on behalf of an eligible individual to obtain judicial review of his or her commitment in order to appeal or otherwise challenge acts or omissions which have subjected the individual to abuse or neglect or otherwise violated his or her rights. This restriction does not prevent a P&A system from representing clients in commitment or recommitment proceedings using other resources so long as this representation does not conflict with responsibilities under the Act.

**§ 51.8 Annual reports.**

By January 1 of each year, a report shall be submitted, pursuant to section 105(a)(7) of the Act (42 U.S.C. 10805(a)(7)), to the Secretary which is in the format designated by the Secretary.

**§ 51.9 [Reserved]**

**§ 51.10 Remedial actions.**

Failure to submit an annual report in the designated format on time or to submit requested information and documentation, corrective action plans and ongoing implementation status reports in response to Federal review and monitoring activities or to satisfy any other requirement of the Act, this part, or other requirements, may be considered a breach of the terms and conditions of the grant award and may required remedial action, such as the suspension or termination of an active grant, withholding of payments or converting to a reimbursement method of payment. Any remedial actions shall be taken consistent with 45 CFR Part 74 and 42 CFR Part 50, as appropriate.

**§§ 51.11–51.20 [Reserved]**

## Subpart B—Program Administration and Priorities

**§ 51.21 Contracts for program operations.**

(a) An eligible P&A system should work cooperatively with existing advocacy agencies and groups and, where appropriate, consider entering into contracts for protection and advocacy services with organizations already working on behalf of individuals with metal illness. Special consideration should be given to contracting for the services of groups run by individuals who have received or are receiving mental health services or by family members of such individuals.

(b) An eligible P&A system may contract for the operation of all or part of its program with another public or private nonprofit organization with demonstrated experience in working with individuals with mental illness provided that:

(1) Any organization that will operate the full program meets the requirements of section 104(a)(1), 105 and 111 of the Act (42 U.S.C. 10804(a)(1), 10805 and 10821) and has the capacity to perform protection and advocacy activities throughout the State;

(2) The eligible P&A system institutes oversight and monitoring procedures which ensure that this system will be able to meet all applicable terms, conditions and obligations of the Federal grant;

(3) The eligible P&A system and the contractor organization enter into a written agreement that includes at least the following:

(i) A description of the protection and advocacy services to be provided;

(ii) The type of personnel, their qualifications and training;

(iii) The methods to be used;

(iv) A timetable for performance;

(v) A budget;

(vi) Assurances that the contractor will meet all applicable terms and conditions of the grant;

(vii) Assurances that the contractor has adequate management and fiscal systems in place, including insurance coverage, if appropriate:

(viii) Assurances that the contractor's staff is trained to provide advocacy services to and conduct full investigations on behalf of individuals with mental illness; and

(ix) Assurances that the contractor staff is trained to work with family members of clients served by the P&A system where the clients are:

(A) Minors;

(B) Legally competent and choose to involve the family member; or,

(C) Legally incompetent and the legal guardians, conservators or other legal representatives are family members.

**§ 51.22 Governing authority.**

(a) Each P&A system shall have a governing authority responsible for its planning, designing, implementing and functioning. It shall, jointly with the advisory council, annually establish program priorities and policies.

(b) If the P&A system is organized with a multi-member governing board:

(1) Each P&A system shall establish policies and procedures for the selection of its governing board members and for the board evaluation of the P&A system director. The terms of board members shall be staggered and for 4 years except that any member appointed to fill a vacancy for an unexpired term shall serve for the remainder of such term. A member who has been appointed for a term of 4 years may not be reappointed to the governing board during the 2-year period beginning on the date on which such 4-year term expired.

(2) The board shall be composed of members who broadly represent or are knowledgeable about the needs of the clients served by the P&A system and shall include a significant representation of individuals with mental illness who are, or have been eligible for services, or have received or are receiving mental health services, and family members, guardians, advocates, or authorized representatives of such individuals.

(3) If the governing authority is organized as a private nonprofit entity, the chairperson of the advisory council shall be a member of the governing board.

(c) Continuing efforts shall be made to include members of racial and ethnic minority groups as board members.

(d) Any member of the advisory council may also serve on the governing board.

**§ 51.23 Advisory council.**

(a) Each P&A system shall establish an advisory council to:

(1) Provide independent advice and recommendations to the system.

(2) Work jointly with the governing authority in the development of policies and priorities.

(3) Submit a section of the system's annual report as required under § 51.8.

(b) Members of the council shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, the advocacy needs of persons with mental illness and have demonstrated a substantial commitment to improving mental health services, a provider of mental health services, individuals who have received or are receiving mental health services and family members of such individuals. Continuing efforts shall be made to include members of racial and ethnic minority groups on the advisory council.

(1) At least 60 percent of the membership of the advisory council shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals. At least one family member shall be a primary care giver for an individual who is currently a minor child or youth who is receiving or has received mental health services;

(2) The council shall be chaired by an individual who has received or is receiving mental health services or who is a family member of such an individual;

(3) The advisory council shall meet no less than three times annually. The terms of council members shall be staggered and for 4 years except that any member appointed to fill a vacancy for an unexpired term shall serve for the remainder of such term. A member who has been appointed for a term of 4 years may not be reappointed to the council during the 2-year period beginning on the date on which such 4-year term expired.

(c) Each P&A system shall provide its advisory council with reports, materials and fiscal data to enable review of existing program policies, priorities and performance outcomes. Such submissions shall be made at least annually and shall report expenditures for the past two fiscal years, as well as projected expenses for the next fiscal year, identified by budget category (e.g., salary and wages, contract for services, administrative expenses) including the amount allotted for training of each the advisory council, governing board and staff.

(d) Reimbursement of expenses. (1) Allotments may be used to pay for all or a part of the expenses incurred by members of the advisory council in order to participate in its activities. Expenses may include transportation costs, parking, meals, hotel costs, per diem expenses, stipends or subsistence allowances, and the cost of day care or child care (or its equivalent for the child's travel and subsistence expenses) for their dependents with mental illness or developmental disabilities.

(2) Each P&A system shall establish its own policies and procedures for reimbursement of expenses of council members, taking into account the needs of individual council members, available resources, and applicable restrictions on use of grant funds, including the restrictions in §§ 51.31(e) and 51.6(e).

### § 51.24 Program priorities.

(a) Program priorities and policies shall be established annually by the governing authority, jointly with the advisory council. Priorities shall specify short-term program goals and objectives, with measurable outcomes, to implement the established priorities. In developing priorities, consideration shall be given to, at a minimum, case selection criteria, the availability of staff and monetary resources, and special problems and cultural barriers faced by individuals with mental illness who are multiply handicapped or who are members of racial or ethnic minorities in obtaining protection of their rights. Systemic and legislative activities shall also be addressed in the development and implementation of program priorities.

(b) Members of the public shall be given an opportunity, on an annual basis, to comment on the priorities established by, and the activities of, the P&A system. Procedures for public comment must provide for notice in a format accessible to individuals with mental illness, including such individuals who are in residential facilities, to family members and representatives of such individuals and to other individuals with disabilities. Procedures for public comment must provide for receipt of comments in writing or in person.

### § 51.25 Grievance procedure.

(a) The P&A system shall establish procedures to address grievances from:

(1) Clients or prospective clients of the P&A system to assure that individuals with mental illness have full access to the services of the program; and

(2) Individuals who have received or are receiving mental health services in the State, family members of such individuals, or representatives of such individuals or family members to assure that the eligible P&A system is operating in compliance with the Act.

(b) At a minimum, the grievance procedures shall provide for:

(1) An appeal to the governing authority from any final staff review and/or determination; in cases where the governing authority is the director of the P&A system, the final review and/or determination shall be made by a superior of the governing authority, e.g., a supervisor, or by an independent entity, e.g., an appointed board or committee.

(2) Reports, at least annually, to the governing authority and the advisory council describing the grievances received and processed and their resolution;

(3) Identification of individuals responsible for review;

(4) A timetable to ensure prompt notification concerning the grievance procedure to clients, prospective clients or persons denied representation, and to ensure prompt resolution;

(5) A written response to the grievant; and

(6) Protection of client confidentiality.

### § 51.26 Conflicts of interest.

The P&A system must develop appropriate policies and procedures to avoid actual or apparent conflict of interest involving clients, employees, contractors and subcontractors, and members of the governing authority and advisory council, particularly with respect to matters affecting client services, particular contracts and subcontracts, grievance review procedures, reimbursements and expenses, and the employment or termination of staff.

### § 51.27 Training.

A P&A system shall provide training for program staff, and may also provide training for contractors, governing board and advisory council members to enhance the development and implementation of effective protection and advocacy services for individuals with mental illness, including at a minimum:

(a)(1) Training of program staff to work with family members of clients served by the program where the individual with mental illness is:

(i) A minor,

(ii) Legally competent and chooses to involve the family member; or

(iii) Legally incompetent and the legal guardian, conservator or other legal representative is a family member.

(2) This training may be provided by individuals who have received or are receiving mental health services and family members of such individuals.

(b) Training to enhance sensitivity to and understanding of individuals with mental illness who are members of racial or ethnic minorities and to develop strategies for outreach to those populations.

(c) Training to conduct full investigations of abuse or neglect.

### §§ 51.28–51.30 [Reserved]

## Subpart C—Protection and Advocacy Services

### § 51.31 Conduct of protection and advocacy activities.

(a) Consistent with State and Federal law and the canons of professional ethics, a P&A system may use any appropriate technique and pursue administrative, legal or other appropriate remedies to protect and advocate on behalf of individuals with mental illness to address abuse, neglect or other violations of rights.

(b) A P&A system shall establish policies and procedures to guide and coordinate advocacy activities. The P&A system shall not implement a policy or practice restricting the remedies which may be sought on behalf of individuals with mental illness or compromising the authority of the P&A system to pursue such remedies through litigation, legal action or other forms of advocacy. However, this requirement does not prevent the P&A system from placing limitations on case or client acceptance criteria developed as part of the annual

priorities. Prospective clients must be informed of any such limitations at the time they request service.

(c) Wherever possible, the program should establish an ongoing presence in residential mental health care or treatment facilities, and relevant hospital units.

(d) Program activities should be carried out in a manner which allows program staff to:

(1) Interact regularly with those individuals who are current or potential recipients of protection and advocacy services;

(2) Interact regularly with staff providing care or treatment;

(3) Obtain information and review records; and

(4) Communicate with family members, social and community service workers and others involved in providing care or treatment.

(e) A P&A system may support or provide training, including related travel expenses, for individuals with mental illness, family members of such individuals, and other persons who are not program staff, contractors, or board or council members, to increase knowledge about protection and advocacy issues, to enhance leadership capabilities, or to promote Federal-State and intra-State cooperation on matter related to mental health system improvement. Decisions concerning the selection of individuals to receive such training shall be made in accordance with established policies, procedures and priorities of the P&A system.

(f) A P&A system may monitor, evaluate and comment on the development and implementation of Federal, State and local laws, regulations, plans, budgets, levies, projects, policies and hearings affecting individuals with mental illness as a part of federally funded advocacy activities. A P&A system shall carry out systemic advocacy—those efforts to implement changes in policies and practices of systems that impact persons with mental illness.

(g) Determination of ''probable cause'' may result from P&A system monitoring or other activities, including observation by P&A system personnel, and reviews of monitoring and other reports prepared by others whether pertaining to individuals with mental illness or to general conditions affecting their health or safety.

(h) A P&A which is a public P&A system shall be free from hiring freezes, reductions in force, prohibitions on staff travel, or other policies imposed by the State to the extend that such policies would impact program staff or activities funded with Federal dollars and would prevent the P&A system from carrying out its mandates under the Act.

(i) A P&A system may exercise its authority under State law where the authority exceeds the authority required by the Act. However, State law must not diminish the required authority of the Act.

### § 51.32 Resolving disputes.

(a) Each P&A system is encouraged to develop and employ techniques such as those involving negotiation, conciliation and mediation to resolve disputes early in the protection and advocacy process.

(b) Disputes should be resolved whenever possible through nonadversarial process involving negotiation, mediation and conciliation. Consistent with State and Federal laws and canons of professional responsibility, family members should be involved in this process, as appropriate, where the individual with mental illness is:

(1) A minor,

(2) Legally competent and chooses to involve the family member, or

(3) Legally incompetent and the legal guardian, conservator or other legal representative is a family member or the legal guardian, conservator or other legal representative chose to involve the family member.

(c) A P&A system must exhaust in a timely manner all administrative remedies, where appropriate, prior to initiating legal action in a Federal or State court.

(d) Paragraph (c) of this section does not apply to any legal action instituted to prevent or eliminate imminent serious harm to an individual with mental illness nor does it apply in circumstances where administrative procedures do not exist. If in pursing administrative remedies, the P&A system determines that any matter with respect to an individual with mental illness with mental illness with not be resolved within a reasonable time, the P&A system may pursue alternative remedies, including initiating legal action.

(e) A P&A system shall be held to the standard of exhaustion of remedies provided under State and Federal law. The Act imposes no additional burden respecting exhaustion of remedies.

### §§ 51.33–51.40 [Reserved]

## Subpart D—Access to Records, Facilities and Individuals

### § 51.41 Access to records.

(a) Access to records shall be extended promptly to all authorized agents of a P&A system.

(b) A P&A system shall have access to the records of any of the following individuals with mental illness:

(1) An individual who is a client of the P&A system if authorized by that individual or the legal guardian, conservator or other legal representative.

(2) An individual, including an individual who has died or whose whereabouts is unknown to whom all of the following conditions apply:

(i) The individual, due to his or her mental or physical condition, is unable to authorize the P&A system to have access.

(ii) The individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State or one of its political subdivisions; and

(iii) A complaint or report has been received and the P&A system has determined that there is probable cause to believe that the individual has been or may be subject to abuse or neglect.

(3) An individual who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint or report has been received by the P&A system and with respect to whom the P&A system has determined that there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, whenever all of the following conditions exists:

(i) The P&A system has made a good faith effort to contact the representative upon prompt receipt of the representative's name and address;

(ii) The P&A system has made a good faith effort to offer assistance to the representative to resolve the situation; and

(iii) The representative has failed or refused to act on behalf of the individual.

(c) Information and individual records, whether written or in another medium, draft or final, including handwritten notes, electronic files, photographs or video or audio tape records, which shall be available to the P&A system under the Act shall include, but not be limited to:

(1) Information and individual records, obtained in the course of providing intake, assessment, evaluation, supportive and other services, including medical records, financial records, and reports prepared or received by a member of the staff of a facility or program rendering care or treatment. This includes records stored or maintained in locations other than the facility or program as long as the system has obtained appropriate consent consistent with section

105(a)(4) of the Act. The system shall request of facilities that in requesting records from service providers or other facilities on residents that they indicate in the release form the records may be subject to review by a system.

(2) Reports prepared by an agency charged with investigating abuse neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that describe any or all of the following:

(i) Abuse, neglect, or injury occurring at the facility;

(ii) The steps taken to investigate the incidents;

(iii) Reports and records, including personnel records, prepared or maintained by the facility, in connection with such reports of incidents; or

(iv) Supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect or injury such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings.

(3) Discharge planning records.

(4) Reports prepared by individuals and entities performing certification or licensure reviews, or by professional accreditation organizations, as well as related assessments prepared for the facility by its staff, contractors or related entities, except that nothing in this section is intended to preempt State law protecting records produced by medical care evaluation or peer review committees.

(5) Professional, performance, building or other safety standards, demographic and statistical information relating to the facility.

(d) A P&A system shall have reasonable access and authority to interview and examine all relevant records of any facility service recipient (consistent with the provisions of section 105(a)(4) of the Act) or employee.

(e) A P&A system shall be permitted to inspect and copy records, subject to a reasonable charge to offset duplicating costs.

**§ 51.42 Access to Facilities and residents.**

(a) Access to facilities and residents shall be extended to all authorized agents of a P&A system.

(b) A P&A system shall have reasonable unaccompanied access to public and private facilities and programs in the State which render care or treatment for individuals with mental illness, and to all areas of the facility which are used by residents or are accessible to residents. The P&A system shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect. This authority shall include the opportunity to interview any facility service recipient, employee, or other persons, including the person thought to be the victim of such abuse, who might be reasonably believed by the system to have knowledge of the incident under investigation. Such access shall be afforded, upon request, by the P&A system when:

(1) An incident is reported or a complaint is made to the P&A system;

(2) The P&A system determines there is probable cause to believe that an incident has or may have occurred; or

(3) The P&A system determines that there is or may be imminent danger of serious abuse or neglect of an individual with mental illness.

(c) In addition to access as prescribed in paragraph (b) of this section, a P&A system shall have reasonable unaccompanied access to facilities including all area which are used by residents, are accessible to residents, and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours. Residents include adults or minors who have legal guardians or conservators. P&A activities shall be conducted so as to minimize interference with facility programs, respect residents' privacy interests, and honor a resident's request to terminate an interview. This access is for the purpose of:

(1) Providing information and training on, and referral to programs addressing the needs of individuals with mental illness, and information and training about individual rights and the protection and advocacy services available from the P&A system, including the name, address, and telephone number of the P&A system.

(2) Monitoring compliance with respect to the rights and safety of residents; and

(3) Inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents.

(d) Unaccompanied access to residents shall include the opportunity to meet and communicate privately with individuals regularly, both formally and informally, by telephone, mail and in person. Residents include minors or adults who have legal guardians or conservators.

(e) The right of access specified in paragraph (c) of this section shall apply despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators. The system shall make very effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that the system will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian. The system shall take no formal action on behalf of individuals with legal guardians or conservators, or initiate a formal attorney/client or advocate/client relationship without appropriate consent, except in emergency situations as described in § 51.41(b)(3).

(f) A P&A system providing representation to individuals with mental illness in Federal facilities shall have all the rights and authority accorded other representatives of residents of such facilities pursuant to State and Federal laws.

**§ 51.43 Denial of delay or access.**

If a P&A system's access to facilities, programs, residents or records covered by the Act or this part is delayed or denied, the P&A system shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name, address and telephone number of the legal guardian, conservator, or other legal representative of an individual with mental illness. Access to facilities, records or residents shall not be delayed or denied without the prompt provision of written statements of the reasons for the denial.

**§ 51.44 [Reserved]**

**§ 51.45 Confidentiality of protection and advocacy system records.**

(a) Records maintained by the P&A system are the property of the P&A system which must protect them from loss, damage, tampering or use by unauthorized individuals. The P&A system must:

(1) Except as provided elsewhere in this section, keep confidential all records and information, including information contained in any automated electronic database pertaining to:

(i) Clients to the same extent as is required under Federal or State laws for a provider of mental health services;

(ii) Individuals who have been provided general information or technical assistance on a particular matter;

(iii) Identity of individuals who report incidents of abuse or neglect or furnish information that forms the basis for a

determination that probable cause exists; and

(iv) Names of individuals who are residents and provide information for the record.

(2) Have written policies governing access to, storage of, duplication and release of information from client records; and

(3) Obtain written consent from the client, if competent, or from his or her legal representative, from individuals who have been provided general information or technical assistance on a particular matter and from individuals who furnish reports or information that forms the basis for a determination of probable cause, before releasing information to individuals not otherwise authorized to receive it.

(b) Nothing in this subpart shall prevent the P&A system from. (1) Issuing a public report of the results of an investigation which maintains the confidentiality of the individuals listed in paragraph (a)(1) of this section or,

(2) Reporting the results of an investigation which maintains the confidentiality of individual service recipients to responsible investigative or enforcement agencies should an investigation reveal information concerning the facility, its staff, or employees warranting possible sanctions or corrective action. this information may be reported to agencies responsible for facility licensing or accreditation, employee discipline, employee licensing or certification, or criminal prosecution.

(c) For purposes of any periodic audit, report, or evaluation of the performance of the P&A system, the Secretary shall not require the P&A system to disclose the identity, or any other personally identifiable information, of any individual requesting assistance under a program. This requirement does not restrict access by the Department or other authorized Federal or State officials to client records or other records of the P&A system when deemed necessary for audit purposes and for monitoring P&A system compliance with applicable Federal or State laws and regulations. The purpose of obtaining such information is solely to determine that P&A systems are spending their grant funds awarded under the Act on serving individuals with mental illness. Officials that have access to such information must keep it confidential to the maximum extent permitted by law and regulations. If photostatic copies of materials are provided, then the destruction of such evidence is required once such reviews have been completed.

(d) Subject to the restrictions and procedures set out in this section, implementing section 106 (a) and (b) of the Act (42 U.S.C. 10806 (a) and (b)), this part does not limit access by a legal guardian, conservator, or other legal representative of an individual with mental illness, unless prohibited by State or Federal law, court order or the attorney-client privilege.

**§ 51.46 Disclosing information obtained from a provider of mental health services.**

(a) Except as provided in paragraph (b) of this section, if a P&A system has access to records pursuant to section 105(a)(4) of the Act (42 U.S.C. 10805(a)(4)) which, under Federal or State law, are required to be maintained in a confidential manner by a provider of mental health services, it may not disclose information from such records to the individual who is the subject of the information if the mental health professional responsible for supervising the provision of mental health services to that individual has given the P&A system a written determination that disclosure of such information to the individual would be detrimental to the individual's health. The provider shall be responsible for giving any such written determination to the P&A system at the same time as access to the records containing the information is granted.

(b)(1) If the disclosure of information has been denied under paragraph (a) of this section to an individual, the following individuals or the P&A system may select another mental health professional to review the information and to determine if disclosure of the information would be detrimental to the individual's health:

(i) Such individual;

(ii) The legal guardian, conservator or other legal representative of the individual; or

(iii) An eligible P&A system, acting on behalf of an individual:

(A) Whose legal guardian is the State; or

(B) Whose legal guardian, conservator, or other legal representative has not, within a reasonable time after the denial of access to information under paragraph (a), selected a mental health professional to review the information.

(2) If such mental health professional determines, based on professional judgment, that disclosure of the information would not be detrimental to the health of the individual, the P&A system may disclose such information to the individual.

(c) The restriction in paragraph (b) of this section does not affect the P&A system's access to the records.

[FR Doc. 97–26835 Filed 10–9–97; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 433

**[MB–113–F]**

**RIN: 0938–AI30**

## Medicaid Program; Limitation on Provider-Related Donations and Health Care-Related Taxes; Revision of Waiver Criteria for Tax Programs Based Exclusively on Regional Variations; Correction

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the final regulations that were published in the **Federal Register** on August 13, 1993 (58 FR 43156). These regulations revised the Medicaid regulations relating to limitations on federal financial participation (FFP) in State medical assistance expenditures when States receive funds from provider-related donations and revenues generated by certain health care-related taxes.

**EFFECTIVE DATE:** September 13, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jim Frizzera, (410) 786–9535.

**SUPPLEMENTARY INFORMATION:** On August 13, 1993, we published final regulations that further implemented statutory provisions that limit the amount of Federal financial participation (FFP) available for medical assistance expenditures in a fiscal year when States receive funds donated from providers and revenues generated by certain health care related taxes. The August 13, 1993 final rule amended on interim final rule that was published in the **Federal Register** on November 24, 1992 that established in regulations the statutory limitations.

In general, the statute specified the types of health care related taxes that a State is permitted to receive without a reduction in FFP. Such taxes are broad-based taxes that apply in a uniform manner to all health care providers in a class, and that do not hold providers harmless for their tax costs. If, however, a State tax is not broad-based and uniform, a State may submit a waiver application to us requesting that we

treat its tax as a broad-based and uniform health care-related tax. A State application may be approved if the State established that, among other things, the tax is generally redistributive. We established in the regulation the waiver criteria under which we will determine whether a tax, that does not meet the statutory defined broad-based or uniform requirements, is generally redistributive.

As published, the regulation at 42 CFR 433.68(e)(2)(iv) contains an error in the percentage amount necessary to demonstrate that a State tax that varies, based exclusively on regional variations, and enacted and in effect prior to November 24, 1992, is generally redistributive and can be considered to meet the criteria for waiver of the uniform tax requirement.

**List of Subjects in 42 CFR Part 433**

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

Accordingly, 42 CFR part 433 is corrected by making the following correcting amendment:

## PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 continues to read as follows:

**Authority:** Secs. 1102, 1137, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1902(t), 1903(A)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), (1903(r), 1903(w), 1912, and 1919(e) of the Social Security Act (42 U.S.C. 1302, 1320b–7, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396a(t), 1396b(a)(3), 1396b(d)(2), 1396a(d)(5), 1396b(i), 1396b(o), 1396b(p), 1396b(r), 1396b(w), and 1396k.)

**§ 433.68 [Corrected]**

2. In § 433.68, paragraph (e)(2)(iv), remove the percentage ''0.85'' and add in its place ''0.70''.

(Catalog of Federal Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 12, 1997.

**Neil J. Stillman,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 97–27194 Filed 10–9–97; 4:00 pm]

**BILLING CODE 4120–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[MM Docket Nos. 92–266 and 93–215; FCC 97–339]**

### Small Cable Television Systems; Rate Regulation

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted a Fourteenth Order on Reconsideration denying two petitions seeking reconsideration of the rules adopted for small cable television systems governing rates charged for regulated cable services in the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, FCC 95–195. The Commission also adopted minor clarifications to the rate rules.

**EFFECTIVE DATE:** October 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Julie Buchanan, Cable Services Bureau, (202) 418–7200.

**SUPPLEMENTARY INFORMATION:** The following is a synopsis of the Commission's Fourteenth Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, adopted September 24, 1997 and released October 1, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

**Synopsis**

*I. Introduction*

1. On May 5, 1995, the Commission adopted the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, FCC 95–196, 60 FR 35854 (July 12, 1995) (''Small System Order''), thereby modifying the rules governing rates charged for regulated cable services by certain smaller cable systems. In this order, we address petitions for reconsideration of the Small System Order.

*II. Background*

2. Section 623(i) of the Communications Act of 1934, as amended (''Communications Act''), requires that the Commission design rate regulations to reduce the administrative burdens and the cost of compliance for cable systems with 1,000 or fewer subscribers. In the Small System Order, the Commission extended small system rate relief to small cable systems owned by small cable companies. The Small System Order defines a small system as any system that serves 15,000 or fewer subscribers, and it defines a small cable company as a cable operator that serves a total of 400,000 or fewer subscribers over all of its systems.

3. In addition to adopting the new categories of small systems and small cable companies, the Small System Order introduced a form of rate regulation known as the small system cost of service methodology. This approach, which is available only to small systems owned by small cable companies, follows general principles of cost of service rate regulation. An eligible cable operator may establish a maximum permitted rate for regulated cable service equal to the amount necessary to cover its operating expenses plus a reasonable return on its prudent investment in the assets used to provide that service. The small system cost of service methodology differs both procedurally and substantively from the standard cost of service methodology available to cable operators generally.

4. To implement the small system cost of service rules, we designed FCC Form 1230, a simplified one-page form, for use exclusively by operators eligible for these rules. This form is more streamlined than Form 1220 used for cost of service showings by larger operators. To use Form 1230, the operator must calculate five items of data pertaining to the system in question: annual operating expenses, net rate base, rate of return, channel count and subscriber count. Once these variables are calculated, the form generates the maximum per channel rate the operator may charge for regulated service. Although subject to regulatory review, this rate is presumed reasonable if it is no more than $1.24 per channel.

5. When applicable, the presumption of reasonableness effectively exempts eligible cable operators from many of the proof burdens that apply under our standard cost of service rules. For example, eligible small cable companies have greater discretion than larger operators in determining how to allocate costs between regulated and unregulated services and between various levels of regulated services. Similarly, qualifying cable operators using Form 1230 are not subject to the presumption of unreasonableness that otherwise attaches when an operator seeks a rate of return higher than

11.25%. As noted, an eligible operator enjoys the presumption of reasonableness with respect to these and other factors only if the maximum permitted rate claimed on Form 1230 does not exceed $1.24 per channel. If the rate exceeds $1.24 per channel, the cable operator still may use Form 1230, but is subject to the same presumptions that apply in a standard cost of service showing. As with other rate-setting procedures, a cost of service showing involving Form 1230 is subject to review by the cable operator's local franchising authority and/or by the Commission.

6. With respect to the effective date of the small system rules, we directed franchising authorities to apply the small system cost of service approach to rate cases pending as of the release date of the Small System Order because the record demonstrated that the pre-existing rules were imposing a significant burden on small systems. The Small System Order was released on June 5, 1995.

*III. Petitions for Reconsideration*

7. Two parties seek reconsideration of the Small System Order and a number of other parties oppose the petitions. In one petition, the Georgia Municipal Association (''GMA'') requests that we repeal the small system cost of service rules in their entirety. In the alternative, GMA urges the Commission to lower the maximum amount of $1.24 per channel at which an operator may set rates and still be entitled to a presumption of reasonableness. In support of its petition, GMA questions the accuracy of the underlying cost data that we used to set the $1.24 per channel rate. In addition, GMA claims that the new rules will increase burdens on franchising authorities and lead to unreasonable rates for regulated cable services. GMA also cites examples of what it claims are cable operators abusing the small system rules.

8. The New Jersey Board of Public Utilities (''New Jersey Board'') seeks reconsideration of the Small System Order to the extent it permits application of the small system rules to rate cases that were pending as of the release date of the order. In support of its petition, the New Jersey Board describes the possible impact of the small system rules upon a rate case that was pending before it when the Commission released the Small System Order on June 5, 1995. According to the New Jersey Board, the cable operator in that case has given notice of its intent to attempt to justify its proposed rate increase by filing FCC Form 1230. The New Jersey Board complains that the rules governing the information that a franchising authority may seek in conjunction with its review of a Form 1230 are overly restrictive. The New Jersey Board also objects to having to bear the burden of showing the unreasonableness of the rate sought by the operator if that rate does not exceed $1.24 per regulated channel. As a result of the above, the New Jersey Board contends it will be ''precluded from establishing whether the cable operator's subscribers are being charged a reasonable rate,'' assuming the operator meets the small system and small cable company definitions. The New Jersey Board also asserts the alleged unfairness of applying the small system cost of service rules to the pending case in light of the resources that the Board already has expended in the case. Along with its petition for reconsideration, the New Jersey Board also filed a motion for stay of the Small System Order to the extent it mandates application of the new rules to pending cases.

*IV. Discussion*

9. Neither petition challenges our determination that some measure of regulatory relief is appropriate for small systems owned by small cable companies. The petitioners do not dispute our conclusion that such systems face proportionately higher operating and capital costs than larger cable entities. Likewise, the petitioners do not contest that our standard cost of service rules may place ''an inordinate hardship'' on smaller systems ''in terms of the labor and other resources that must be devoted to ensuring compliance.'' Therefore, the petitions give us no reason to reconsider our decision to establish for eligible small systems a form of rate regulation that lessens some of the substantive and procedural burdens that otherwise would apply. Because the petitions raise separate issues, we will resolve the merits of each petition individually.

A. The GMA Petition

10. GMA challenges the presumption of reasonableness that arises when an eligible small system uses Form 1230 to justify a regulated rate that does not exceed $1.24 per channel. As noted above, we established $1.24 per channel as the appropriate cut-off based on cost data previously submitted to the Commission by small cable companies seeking to establish regulated rates for their small systems by using Form 1220 in accordance with our standard cost of service rules. GMA asserts that a careful review of the Form 1220s that we relied on to set the $1.24 per channel rate ''would probably * * * [show] that corrections should be made to the operators' calculations in a large percentage of cases.'' In support of this prediction, GMA states that ''several'' Georgia cable operators using FCC Form 1220 have overstated the value of the intangible assets in their ratebases. In addition, GMA states that the Commission found calculation or allocation errors in each of the nine cost of service cases that we had addressed as of the date GMA filed its petition. GMA cites three specific cost of service cases in which the Cable Services Bureau (''Bureau'') made adjustments to correct such errors. On this basis, GMA argues that ''there is a strong possibility that there are errors'' in the Form 1220s from which we gleaned the cost data to establish the presumptively reasonable rate of $1.24 per channel.

11. We believe that the rate-setting mechanism we adopted in the Small System Order reflects a reasoned judgment as to the method for establishing the rates that an eligible small system may charge for regulated services. Neither GMA nor any other party challenges this mechanism. GMA objects only to the input data that produced the standard of $1.24 per regulated channel against which the rates of eligible small systems are measured. We determined in the Small System Order, however, that a more comprehensive review of small system cost data was not necessary to ensure that our small system rules were properly tailored to the conditions faced by such systems.

12. GMA does not challenge our finding that small systems owned by small cable companies were in need of immediate relief. GMA suggests that the Form 1220 filings on which we relied were so facially inaccurate that we should have conducted a further analysis of small system cost data. We disagree. This approach would have delayed implementation of measures for which there was an immediate need and would have imposed additional administrative responsibilities (i.e., having to respond to Commission inquiries concerning small system costs) on the very entities that we found were the most burdened by regulation.

13. GMA fails to persuade us that the benefits of further analysis of small system cost data would have outweighed the administrative costs and delay that such analysis would have entailed. While GMA does not dispute that such costs and delay would have been both inevitable and extremely burdensome, it fails to factor these considerations into its discussion. GMA bases its request for reconsideration on

the fact that the Bureau found allocation or calculation errors in the cost of service cases it cites. However, the impact of the Bureau's adjustments in the cited cases are overstated by GMA and do not undermine the formulation of the $1.24 standard.

14. The Bureau decisions cited by GMA were based on general cost of service principles and not under the interim rules the Commission adopted in February 1994. As of the time of those filings, we had directed cost of service operators to justify their rates in accordance with traditional cost of service principles generally applicable in the field of utility rate regulation. After seeking and reviewing further public comment, we subsequently adopted more refined cost of service rules better tailored for use in the cable service context. At the same time, we designed Form 1220 for use in accordance with the new rules. The cost data used in the Small System Order were gleaned from Form 1220s filed by small systems pursuant to cost of service rules adapted specifically for use by cable operators. The specificity of the new rules, combined with the uniformity of presentation required by Form 1220, makes the latter submissions inherently more reliable than the earlier submissions cited by GMA. Thus, the errors in the filings relied on by GMA do not suggest the likelihood of material inaccuracies in the subsequent Form 1220 filings. This is particularly true given the nature of the errors in the cases cited by GMA. In each case, the errors were so minor that the Bureau found that the rates actually being charged by the cable operator were nevertheless justified and denied the complaint.

15. We further note that in the Small System Order, we decided that standards applicable to cable systems generally were inappropriate for small systems owned by small cable companies. In particular, we decided that eligible small systems should be given more regulatory leeway than larger cable entities because small systems face disproportionately higher operating costs, capital costs, and regulatory compliance costs. In fact, with respect to eligible small systems, we relaxed the very standards that had caused the Bureau to make the adjustments described in the cost of service cases cited by GMA.

16. GMA does not dispute that we should be less restrictive in applying cost of service principles to small systems owned by small cable companies. Yet it invites us to question cost information submitted by such systems by applying the stricter standards that we have found inappropriate for those systems. Because GMA's argument relies on overly restrictive standards, we find that it has not raised a material issue with respect to the reliability of those filings.

17. In addition to its specific challenge to the per channel rate of $1.24, GMA recites several ''experiences'' of Georgia franchising authorities that purport to show that the small system rules ''are unfair to those franchising authorities who have invested a substantial amount of time and money in the rate regulation process.'' GMA further complains that these examples prove that ''the rules are unfair to subscribers, because some cable operators will increase rates well beyond the level which subscribers would pay if competition existed.'' These conclusory allegations do not refute the specific findings or analyses set forth in the Small System Order and do not state a basis for us to reconsider that order. Furthermore, franchising authorities had no reasonable reliance interest in our rules remaining unchanged. As for practices of the individual operators identified in the GMA petition, we do not believe it is appropriate for us to make specific findings in this context regarding the propriety of those practices. To the extent cable operators fail to abide by our rules, local franchising authorities may take appropriate action.

18. For the reasons stated above, we hereby deny GMA's petition for reconsideration.

B. The New Jersey Board Petition

19. The New Jersey Board objects to the Small System Order to the extent it requires local franchising authorities to permit eligible systems to use the small system cost of service methodology in cases pending as of the date the Small System Order was released. In support of its petition, the New Jersey Board describes the potential impact of the Small System Order upon a rate case pending before it. That case involves the rates charged by Service Electric Cable TV of Hunterdon (''Service Electric''). Service Electric filed a standard cost of service showing with the New Jersey Board on July 14, 1994. Pursuant to that showing, Service Electric sought to increase its monthly rates from $21.00 to $26.31 for its 60-channel basic service tier. That case was pending when the Commission released the Small System Order on June 5, 1995, although the staff of the New Jersey Board had negotiated a tentative settlement with Service Electric that was subject to the approval of the New Jersey Board. Before such approval occurred, Service Electric gave notice of its intent to attempt to justify its proposed rate increase by filing FCC Form 1230.

20. The New Jersey Board contends that under the small system cost of service rules, Service Electric might be able to justify the rate increase it sought in its initial showing to the Board or, potentially, an even greater increase. According to the New Jersey Board, the rules governing the information that a franchising authority may seek in conjunction with its review of Form 1230 are so restrictive that it will be ''difficult if not impossible to challenge'' the rate the operator seeks to justify. The New Jersey Board also notes that under the small system cost of service rules, the burden is on the franchising authority to show the unreasonableness of the rate sought by an eligible small system if that rate does not exceed $1.24 per regulated channel. The New Jersey Board asserts that this ''unprecedented'' shift in the burden of proof will ''necessitate the use of Board and State resources not usually required'' in order to establish the unreasonableness of the rate sought by the cable operator.

21. Based on the above, the New Jersey Board argues that it will be ''precluded from establishing whether Service Electric's subscribers are being charged a reasonable rate,'' assuming the operator meets the small system and small cable company definitions. The New Jersey Board also asserts the alleged unfairness of applying the small system cost of service rules to the pending case in light of the resources that it already has expended in the case.

22. As an initial matter, we note that the petition seeks reconsideration of a Commission rule of general applicability based solely on the potential effect of that rule on a single rate case affecting approximately 3,000 cable subscribers. The Commission is charged with structuring a national framework of rate regulation. A broader and more representative showing of the rule's impact is necessary for us to review the merits of a particular rule or regulatory approach.

23. Further, the New Jersey Board fails to refute the underlying analysis supporting our decision to apply the new rules to pending cases. We adopted this approach based upon our balancing of various factors. With respect to rate regulation, Congress specifically directed us to reduce the administrative burdens and ease the costs of compliance for smaller systems. In the Small System Order, we concluded that our then existing rules ''have significantly burdened small systems.'' We designed the small system cost of service rules to remedy this problem.

Having determined small systems' need for immediate relief, we deemed it in the public interest to provide such relief accordingly. We believe that it is appropriate to apply a new rule to pending cases where the new rule serves to alleviate an existing restriction on regulated parties, as the small system cost of service rules did by creating an additional method for eligible systems to justify their rates. In addition, were pending cases not made subject to the new rules, subscribers in some areas might have received refunds when the pending cases were decided, followed immediately by rate hikes when the systems put new rates into effect prospectively in accordance with the small system cost of service methodology. Applying the new small system rules to pending cases avoids this confusing ''roller-coaster'' result.

24. We decided that the small system cost of service rules would not affect final decisions of local franchising authorities made before the release of the Small System Order. In these cases, the public interest, and in particular the interests of administrative finality, dictated that the final decision of a local franchising authority should not be subject to reconsideration or appeal under the small system rules.

25. By seeking reconsideration, the New Jersey Board suggests, implicitly, that we erred in finding a need for immediate relief. Yet it offers no arguments or evidence to refute this finding and thus presents no basis to reconsider it. The New Jersey Board's statement of a policy preference cannot overcome the evidence concerning the plight of smaller systems that was before us when we adopted the Small System Order. As James Cable Partners and Rifkin and Associates, Inc. argues, it makes no sense ''to complete pending cases under pre-existing criteria that do not embody the policy and statutory concerns that led to the adoption of the Small System Order in the first place.'' Likewise, the New Jersey Board does not dispute the ''roller-coaster'' effect on rates that would result if the new rules were not applied to pending cases.

26. The New Jersey Board contends that application of the small system rules to the pending Service Electric case will result in a waste of the resources it already has expended in that case. It objects to our decision to place on the franchising authority the burden of proving the unreasonableness of a proposed rate that does not exceed $1.24 per regulated channel. The New Jersey Board suggests that the presumption of reasonableness that will attach to such a rate, coupled with the limitations on the information it can demand from the operator, effectively will preclude it from determining whether a particular rate is reasonable. We disagree.

27. We understand the frustration of the New Jersey Board with respect to its prior expenditure of resources in accordance with the standard cost of service rules. We note, however, that those expenditures were made with notice of the possibility that we would modify the rules governing small systems. Unfortunately, rule changes and rule modifications sometimes lead to inefficiencies and disruptions for both the regulator and the regulated. We are forced to balance these factors against the impact of delaying implementation of the new rule. Since the Service Electric case is the only matter in which a franchising authority has articulated this concern, we cannot conclude that the problem is so significant to require us to reconsider our prior decision. We do not believe that the Small System Order will result in squandered resources even in the Service Electric case. The efforts already expended by the New Jersey Board in amassing data and making factual determinations will not have been wasted since they are relevant when the New Jersey Board decides the rate case in accordance with the small system rules.

28. More generally, we disagree with the New Jersey Board's characterization of the permissible scope of information requests that a franchising authority may make when reviewing Form 1230. The Small System Order expressly recognizes the right of franchising authorities to obtain ''the information necessary for judging the validity'' of the filing. No information has been submitted to indicate that anything more than what this rule permits is necessary.

29. We further find that the New Jersey Board has failed to raise a valid argument against imposing the burden of proof on the franchising authority when the rate in question does not exceed $1.24 per channel. What it terms an ''unprecedented shift in the burden of proof'' is the logical extension of our determination that rates at or below $1.24 per regulated channel appear reasonable. The New Jersey Board does not challenge the analysis by which we arrived at the rate of $1.24 per channel. While not disputing that rates at or below $1.24 per channel can be presumed reasonable, the New Jersey Board would ignore this finding in individual rate proceedings and continue to place upon the cable operator the burden of establishing the reasonableness of its requested rate, regardless of the amount. We believe that having made the determination that rates at or below $1.24 per channel may by presumed reasonable, we should shift the burden of proof to the franchising authority when the operator seeks to justify rates that do not exceed that amount. The New Jersey Board does not contest this analysis and therefore we have no basis to reconsider our decision.

30. For these reasons, we hereby deny the New Jersey Board's Petition. The New Jersey Board presents the same arguments in its Motion for Stay as it does in its Petition. Therefore, for the same reasons that we deny its Petition, we also deny the New Jersey Board's Motion for Stay.

C. Other Matters

31. On our own motion, we clarify one aspect of our rule that allocates the burden of establishing whether the rate claimed by a cable operator under the small system cost of service methodology is reasonable. As discussed above, the current rule states: ''If the maximum rate established on Form 1230 does not exceed $1.24 per channel, the rate shall be rebuttably presumed reasonable.'' Thus, the current wording of the rule suggests that the burden depends on the maximum rate permitted by Form 1230, not on the rate that the operator intends to charge. Such an interpretation would create an anomaly where an operator determines that its maximum permitted rate is above $1.24 per regulated channel, but does not actually intend to charge more than $1.24. We did not intend for the operator to have the burden of overcoming all of the presumptions we generally found to be inappropriate for eligible small systems, if the actual rate the operator seeks to charge is within the zone of what we presume to be reasonable. To eliminate this potential confusion, we hereby clarify that the presumption of reasonableness shall apply as long as the actual rate to be charged does not exceed $1.24 per regulated channel, regardless of whether the maximum permitted rate, as calculated on Form 1230, exceeds that amount. The burden shall shift back to the operator once it seeks to actually raise rates above the $1.24 per channel threshold.

32. We also take this opportunity to correct three editing errors that appeared in the rules appendix to the Small System Order. These corrections do not amend the substance of the rules in any way.

33. In the Small System Order, we provided for the treatment of a small system that properly sets its rates in

accordance with the small system cost of service methodology, but later experiences a change in its status, either because the system exceeds the 15,000-subscriber cap for a small system or because the operator exceeds the 400,000-subscriber threshold for a small cable company. While the text of the order explained the regulatory effect of such a transition, the accompanying rules did not. Here we amend the rules consistent with the text of the Small System Order.

34. As discussed above, the Small System Order provided for the application of the small system cost of service rules to cases pending as of the release date of the order if the cable operator in question met the subscriber threshold criteria as of the release date and as of the date the system became subject to rate regulation. The rules appendix inadvertently referred to the effective date, instead of the release date, of the Small System Order for purposes of this rule. We hereby revise the text of § 76.934(h)(9) of our rules to conform it with our intent as set forth in the Small System Order.

35. Due to an editing error, the rules appendix to the Small System Order did not accurately indicate that we were revising the eligibility criteria for streamlined rate reduction to incorporate the new small system and small cable company definitions established in the Small System Order. We hereby amend § 76.922(b)(5) of our rules to conform it with our intent as set forth in the Small System Order.

*V. Final Regulatory Flexibility Certification*

36. As permitted by Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), (''RFA''), we certify that a regulatory flexibility analysis is not necessary because the amendments to the rules adopted in this order will not impose a significant economic impact on a substantial number of small entities as defined by statute, by our rules, or by the Small Business Administration. 5 U.S.C. 605(b). Three of the amendments merely correct the rules and have no substantive effect. In addition, we clarified that the operator's presumption of reasonableness is preserved when the operator's actual rate charged does not exceed $1.24 per regulated channel, regardless of the maximum permitted rate calculated on Form 1230. Because this clarification will benefit small systems owned by small cable companies, we believe a regulatory flexibility analysis is unnecessary. This certification conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

37. The Commission will send a copy of this certification, along with this order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Association, 5 U.S.C. 605(b).

*VI. Ordering Clauses*

38. Accordingly, *It Is Ordered* that, pursuant to the authority granted in sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 543, the petitions for reconsideration filed by the Georgia Municipal Association and the New Jersey Board of Public Utilities, and the Motion for Stay filed by the New Jersey Board of Public Utilities, *are denied*.

39. *It Is Further Ordered* that, pursuant to the authority granted in sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 543, 76.922 and 76.934 of the Commission's rules, 47 CFR 76.922 and 76.934, *are amended* as set forth below.

40. *It Is Further Ordered* that the Commission *shall send* a copy of this Fourteenth Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 76**

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

**Rule Changes**

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.922 is amended by revising paragraph (b)(5)(i) introductory text to read as follows.

**§ 76.922 Rates for the basic service tier and cable programming services tiers.**

* * * * *

(b) * * *

(5) *Streamlined rate reductions.* (i) Upon becoming subject to rate regulation, a small system owned by a small cable company may make a streamlined rate reduction, subject to the following conditions, in lieu of establishing initial rates pursuant to the other methods of rate regulation set forth in this subpart:

* * * * *

3. Section 76.934 is amended by revising paragraphs (h)(5)(i) and (h)(9) and by adding paragraph (h)(11) to read as follows:

**§ 76.934 Small systems and small cable companies.**

* * * * *

(h) * * *

(5) * * *

(i) If the maximum rate established on Form 1230 does not exceed $1.24 per channel, the rate shall be rebuttably presumed reasonable. To disallow such a rate, the franchising authority shall bear the burden of showing that the operator did not reasonably interpret and allocate its cost and expense data in deriving its annual operating expenses, its net rate base, and a reasonable rate of return. If the maximum rate established on Form 1230 exceeds $1.24 per channel, the franchising authority shall bear such burden only if the rate that the cable operator actually seeks to charge does not exceed $1.24 per channel.

* * * * *

(9) In any rate proceeding before a franchising authority in which a final decision had not been issued as of June 5, 1995, a small system owned by a small cable company may elect the form of rate regulation set forth in this section to justify the rates that are the subject of the proceeding, if the system and affiliated company were a small system and small company respectively as of the June 5, 1995 and as of the period during which the disputed rates were in effect. However, the validity of a final rate decision made by a franchising authority before June 5, 1995 is not affected.

* * * * *

(11) A system that is eligible to establish its rates in accordance with the small system cost-of-service approach shall remain eligible for so long as the system serves no more than 15,000 subscribers. When a system that has established rates in accordance with the small system cost-of-service approach exceeds 15,000 subscribers, the system

may maintain its then existing rates. After exceeding the 15,000 subscriber limit, any further rate adjustments shall not reflect increases in external costs, inflation or channel additions until the system has re-established initial permitted rates in accordance with some other method of rate regulation prescribed in this subpart.

[FR Doc. 97–27151 Filed 10–14–97; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 285

**[I.D. 100797B]**

### Atlantic Tuna Fisheries; Atlantic Bluefin Tuna General Category

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

**ACTION:** Opening of the New York Bight fishery.

**SUMMARY:** NMFS opens the Atlantic bluefin tuna (ABT) General category New York Bight fishery. This action is being taken to extend the season for the General category, provide for fishing opportunities in the New York Bight area, and ensure additional collection of biological assessment and monitoring data.

**DATES:** Effective October 9, 1997, 1 a.m. local time until December 31, 1997, or until the date, published in the **Federal Register**, that the set-aside quota is determined to have been taken.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 301-713-2347, or Pat Scida, 508-281-9260.

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

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a subquota of 72 mt of large medium and giant ABT to be harvested from the regulatory area by vessels permitted in the General category during the period beginning October 1 and ending December 31. Due to an overharvest of 1 mt in the September period subquota, and the transfer of 70 mt from other categories (62 FR 51608, October 2, 1997), the October-December period subquota was adjusted to 141 mt. The October-December subquota is divided into a coastwide subquota of 131 mt and 10 mt for the traditional fall New York Bight set-aside area, defined as the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. (Delaware Bay).

NMFS previously announced the closure of the General category fishery for the October-December time period effective October 5, 1997, which published in the **Federal Register** on October 9, 1997. After tallying the landings following the closure, NMFS has determined the remaining unharvested coastwide quota (approximately 10 mt) is insufficient to warrant a reopening of the coastwide General category because daily catch rates in September and October have averaged 30 mt.

The New York Bight set-aside of 10 mt will open effective Thursday, October 9, at 1 a.m. local time. Upon the effective date of the New York Bight set-aside, persons aboard vessels permitted in the General category may fish for, retain, possess, or land large medium and giant ABT only in the New York Bight set-aside area specified above, until the set-aside quota for that area has been harvested. ABT harvested from waters outside the defined set-aside area may not be brought into the set-aside area. Vessels permitted in the Charter/Headboat category, when fishing for large medium and giant ABT, are subject to the same rules as General category vessels when the General category is open.

The announcement of the closure date will be filed with the Office of the Federal Register, and further communicated through the Highly Migratory Species (HMS) Fax Network, the HMS Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the HMS Information Line to check the status of the fishery before leaving for a fishing trip. The phone numbers for the HMS Information Line are (301) 713-1279 and (508) 281-9305. Information regarding the Atlantic tuna fisheries is also available toll-free through NextLink Interactive, Inc., at (888) USA-TUNA.

### Classification

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

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

Dated: October 8, 1997.

**Gary C. Matlock,**

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

[FR Doc. 97–27133 Filed 10–8–97; 3:19 pm]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 961227373–6373–01; I.D. 092497C]**

### Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Nontrawl Sablefish Mop-Up Fishery; Announcement of Extension

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

**ACTION:** Nontrawl sablefish mop-up fishery and delay of the limited entry daily trip limit fishery; announcement of extension.

**SUMMARY:** NMFS announces the extension of and new ending date for the mop-up fishery for nontrawl limited entry sablefish. This action will delay the beginning of the October limited entry daily trip limit fishery. This action is taken in response to unusually bad coastwide weather during the first week of the mop-up fishery. This action is intended to increase safety while providing for harvest of the remainder of the 1997 limited entry nontrawl allocation for sablefish.

**DATES:** This action is effective on October 9, 1997. The nontrawl sablefish mop-up fishery began at 1201 hours local time (l.t.), October 1, 1997, and will end at 1200 hours l.t., October 22, 1997, at which time the limited entry daily trip limit fishery resumes. The daily trip limits for the nontrawl sablefish fishery will remain in effect until the effective date of the 1998 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through October 22, 1997.

**ADDRESSES:** Comments on these actions should be sent to William Stelle, Jr.,

Administrator, Northwest Region, (Regional Administrator), NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070; or to William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these actions has been compiled in aggregate form and is available for public review during business hours at the office of the Regional Administrator.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140; or Svein Fougner at 562–980–4034.

**SUPPLEMENTARY INFORMATION:** On October 1, 1997, NMFS published an inseason action (62 FR 51381) to announce the start and end dates for the limited entry, fixed gear mop-up fishery for sablefish. When the notice was published, 612 mt (1,349,215 lb) of sablefish was available to the mop-up fishery. The Regional Administrator, in consultation with the Pacific Fishery Management Council (Council), set a mop-up season with a cumulative trip limit of 8,500 lb (3,851 kg) (round weight), to be taken in a 2-week period (October 1–15, 1997). NMFS expected that almost all of the limited entry permit holders with sablefish endorsements would participate in the mop-up fishery and would catch the full cumulative limit amount.

As the mop-up season has progressed, NMFS and the states of Washington, Oregon, and California have received numerous telephone calls from fishermen with sablefish endorsements who are concerned about fishing under unusually difficult wind and storm conditions, and who have asked if the mop-up season might be extended. In confirmation of these reports from fishermen, NMFS has noted that the National Weather Service (NWS) announced several severe weather warnings over the week of October 1–8, 1997, that would likely deter fishers from fishing in the mop-up fishery. In addition, as of October 8, 1997, NWS is forecasting continued high winds, gale warnings, and small craft advisories along the Pacific coast.

NMFS consulted with the three states, the Coast Guard, and the Council Chair on whether to extend the length of the mop-up season. The Coast Guard expressed particular concern about the safety of the small vessels that participate in this fishery, as a result of bad weather. All three states and the Council Chair endorsed extending the mop-up season for 1 week. This extension is designed to allow flexibility for fishermen who were not able to fish during the bad weather of the first week of the mop-up fishery. In addition, it should deter fishermen from fishing in the dangerous weather that is still forecast, because they will have an additional week to harvest their limit. The season is only being extended by 1 week in order to limit the impacts on the participants in the daily trip limit fishery, whose fishery is delayed until the end of the mop-up fishery. This extension still allows the daily trip limit fishermen to operate the last 9.5 days in October. Therefore, the Regional Administrator agreed to extend the length of the mop-up season, so that the season will end on Wednesday, October 22, at noon. This notice does not change the cumulative trip limit amount.

As announced in the October 1, 1997, notice on the mop-up fishery, daily trip limits will be reimposed after the mop-up fishery and until the end of the year. Following the mop-up season, the daily trip limits will be 300 lb (136 kg) per day, with no more than 1,500 lb (680 kg) taken in any one calendar month.

A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours l.t. Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated. If a trip lasts more than 1 day, only one daily trip limit is allowed. Daily trip limits were in effect until the beginning of the regular season, and went back into effect after the post-season closure ended on September 5, 1997. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips. In addition, no more than one mop-up cumulative limit may be landed on each limited entry permit with a sablefish endorsement.

The sablefish daily trip limit for the limited entry fishery after the mop-up season is 300 lb (136 kg) per day, with no more than 1,500 lb (680 kg) to be taken in any one calendar month. Since the daily trip limits apply to a 24-hour day starting at 0001 hours, but the mop-up fishery begins and ends at 1200 hours, it will be legal for a vessel in the limited entry fishery to land a daily trip limit between 1201 hours and 2400 hours on October 22, 1997, following the mop-up season.

## NMFS Actions

NMFS announces an extension to the end date of the nontrawl sablefish limited entry mop-up fishery and a delay in the reopening of the limited entry daily trip limit fishery. All other provisions remain in effect. In the January 6, 1997 (62 FR 700) annual management measures, as amended at 62 FR 51381, October 1, 1997, paragraphs IV.E.(2)(c) introductory text and IV.E.(2)(C)(iii) are revised to read as follows:

IV. * * *

E. * * *

(2) *Limited Entry Fishery.* * * *

(c) *Nontrawl trip and size limits.* (i) *Daily trip limits.* Effective 1201 hours October 22, 1997. The daily trip limit for sablefish taken and retained with nontrawl gear north of 36°00′ N. lat. is 300 lb (136 kg), not to exceed 1,500 lb (680 kg) cumulative in a calendar month.

* * * * *

(iii) *Mop-up Fishery.* Effective 1201 hours October 1, 1997, until 1200 hours l.t. October 22, 1997, the cumulative trip limit for sablefish caught with nontrawl gear in the limited entry fishery is 8,500 lb (3,851 kg) per vessel.

(**Note:** The States of Washington, Oregon, and California use a conversion factor of 1.6 to convert dressed sablefish to its round-weight equivalent. Therefore, 8,500 lb (3,851 kg) round weight corresponds to 5,313 lb (2,407 kg) for dressed sablefish.)

## Classification

These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Administrator (see **ADDRESSES**) during business hours. Because of the need for immediate action to extend the mop-up fishery for sablefish, as described above, NMFS has determined that providing an opportunity for public notice and prior comment would be contrary to the public interest. Participants in the mop-up season sablefish fishery are concerned about their safety in dangerous fishing conditions. Delay of this rule could prevent NMFS from allowing smooth extension of the mop-up season and would give fishermen strong incentives to fish in bad weather in order to catch their limit before October 15. Therefore, the agency has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(a)(2), and are exempt from review under E.O. 12866.

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

Dated: October 9, 1997.

**Bruce C. Morehead,**

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

[FR Doc. 97–27296 Filed 10–9–97; 4:24 pm]

BILLING CODE 3510–22–U

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 961107312–7021–02; I.D. 100797A]**

## Fisheries of the Exclusive Economic Zone Off Alaska; ''Other Rockfish'' Species Group in the Bering Sea Subarea

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting retention of the ''other rockfish'' species group in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catch of ''other rockfish'' in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the ''other rockfish'' species group 1997 total allowable catch (TAC) in this area has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 8, 1997, until 2400 hrs, A.l.t., December 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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 1997 TAC of the ''other rockfish'' species group in the Bering Sea subarea was established as 317 metric tons by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the 1997 TAC for the ''other rockfish'' species group in the Bering Sea subarea has been reached. Therefore, NMFS is requiring that further catches of ''other rockfish'' in the Bering Sea subarea be treated as prohibited species in accordance with § 679.21(b).

### Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for the ''other rockfish'' species group in the Bering Sea subarea of the BSAI. Providing prior notice and opportunity for public comment is impracticable and contrary to public interest. The fleet has taken the directed fishing allowance for the ''other rockfish'' species group in the Bering Sea subarea. Further delay would only result in overharvest and disrupt the FMP's objective of not exceeding the TAC throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: October 8, 1997.

**Bruce Morehead,**

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

[FR Doc. 97–27160 Filed 10–8–97; 4:51 pm]

BILLING CODE 3510–22–F

# Proposed Rules

**Federal Register**
Vol. 62, No. 199
Wednesday, October 15, 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

### Office of the Secretary

### 7 CFR Part 6

### Dairy Tariff-Rate Import Quota Licensing

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

**ACTION:** Advanced notice of proposed rulemaking on Dairy Tariff-Rate Import Quota Licensing.

**SUMMARY:** This document requests public comments on possible options for the implementation of the Dairy Tariff-Rate Import Quota Licensing regulation's requirement to permanently reduce certain historical licenses based on surrenders, including possible recision, suspension, or delay of this requirement.

**DATES:** Comments should be submitted on or before 5 p.m. on November 28, 1997 to be assured of consideration.

**ADDRESSES:** Interested parties may mail their comments to: Diana Wanamaker, Group Leader, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250–1021. They may also fax their comments to 202–720–0876. All comments received will be available for public inspection in room 5541–S at the above address. Summaries of comments will be made available via our fax retrieval system by calling (202) 720–0876 after December 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Diana Wanamaker, Group Leader, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW, Stop 1021, Washington, DC 20250–1021 or telephone (202) 720–2916.

**SUPPLEMENTARY INFORMATION:** The Foreign Agricultural Service (FAS) under the authority of 7 CFR 2.43 is requesting comments concerning possible implementation of § 6.25(b) of the Department's Dairy Tariff-Rate Import Quota Licensing Regulation (''the Regulation''). Section 6.26(b)(2) provides that prior to 1999, a determination may be made, in light of market conditions, to eliminate the requirement in §§ 6.25(b)(1)(i) and 6.25(b)(1)(ii) to permanently reduce the quantity of a historical license based on consecutive years of license surrender. Specifically, § 6.25(b)(1)(i) states that beginning in 1999, if a licensee has surrendered to the Department more than 50 percent of a historical license in each of three prior years, that license will be permanently reduced to the average amount entered during those three years (the ''three-year rule''). Section 6.25(b)(1)(ii) provides that beginning in 2001, if a licensee surrenders to the Department more than 50 percent of a historical license in three of the five prior years, that license will be permanently reduced by the average amount entered during those five years (the ''five-year'' rule).

Section 6.25(b)(2) is under review by the Department and we are seeking comments, views, and recommendations with respect to methods and timing of the implementation of this section. At this time, all options are under consideration, including but not limited to the following:

A. Issue an immediate determination that §§ 6.25(b)(1)(i) and 6.25(b)(1)(ii) shall not apply in light of market conditions, effectively rescinding the provision;

B. Revise the regulation to advance the effective date of § 6.25(b)(1)(i) from 1999 to 2003, the effective date of § 6.26(b)(ii) from 2001 to 2005, and the determination date from prior to 1999 to prior to 2003; and

C., D. Revise the regulation to eliminate either the three-year rule (section 6.25(b)(1)(i)) or the five-year rule (section 6.26(b)(1)(ii)) to provide that one but not both of these provisions remain in effect with existing or modified requirements.

FAS also invites comments as to whether current dairy import market conditions are such that FAS should implement § 6.25(b)(2) immediately.

## Background

*Rationale for Section 6.26(b)(2)*

Revision 8 of the Regulation, issued on October 6, 1996, amended the previous rule so that a historical license that is being consistently underutilized will be permanently reduced. Under the previous rule, there was no consequence for surrendering license amounts. In light of the small amount of license available to new entrants or others who wish to increase imports of a certain dairy product, the Department determined that it was sound public policy to reallocate licenses amounts that are consistently not being used. Therefore, the amount by which a historical license is permanently reduced is to be converted to a nonhistorical license.

*How Section 6.25(b) May Be Implemented*

Section 6.25(b)(2) of the Regulation permits the Secretary of Agriculture to determine that § 6.25(b)(1) ''does not apply in light of market conditions.'' Authority for administration of tariff-rate quotas (TRQs) for dairy products was delegated to the FAS Administrator under 7 CFR 2.43.

*Requests for Public Comments on Section 6.25(b)*

FAS requests comments on any of the following options and any other views, comments or recommendation for action that commentors wish to submit on this matter.

A. Using Section 6.25(b)(2) To Permanently Cancel Section 6.25(b)(1)

Under this option, FAS would use its determination authority to find that market conditions in 1997 are such that FAS would invoke § 6.25(b)(2) to permanently void § 6.25(b)(1). If FAS implemented this option, licensees would not be subsequently penalized for having surrendered more than 50 percent of their historical licensed amounts in 1996 or 1997 or in future years. However, the problems concerning repeated license surrenders and limited access to licenses to import inquota TRQ amounts would remain.

B. Postponing Implementation of Section 6.25(b)(1)

Under this option, FAS would amend the § 6.25(b)(1)(i) to delay its implementation from 1999 to a future date. This delay would give licensees time to adjust to changing market conditions which have resulted from the implementation of the Uruguay Round Trade Agreement with respect to market access and export subsidies. FAS invites comments on the concept of delaying implementation of §§ 6.25(b)(1)(i) and

6.25(b)(1)(ii)96, and welcomes proposals as to future implementation dates.

C. Eliminate the Three-Year Rule, While Retaining the Five-Year Rule

Under this option, FAS would amend the Regulation to delete § 6.25(b)(1)(i). This action would eliminate the three-year rule, while retaining the five-year rule, which appears in § 6.25(b)(1)(ii). Per the five-year rule, a licensee could surrender more than 50 percent of its historical licensed amount for two of five consecutive years without penalty. The five-year rule may be viewed as giving licensees two years in which to adjust to changed market conditions.

D. Eliminate the Five-Year Rule, While Retaining the Three-Year Rule

Under this option, FAS could amend the Regulation to delete § 6.25(b)(1)(ii). This action would eliminate the five-year rule, while retaining the three-year rule, which appears in § 6.25(b)(1)(i). Per the three-year rule, a licensee could surrender more than 50 percent of a historical license amount for two years without penalty and not be subjected to license reduction if more than 50 percent of that license were surrendered in the next two years. This also may be viewed as giving licensees time to adjust to changed market conditions.

Signed at Washington, DC, on October 3, 1997.

**Christopher E. Goldthwait,**

*Acting Administrator.*

[FR Doc. 97–26928 Filed 10–14–97; 8:45 am]

BILLING CODE 3410–10–M

## FARM CREDIT ADMINISTRATION

## 12 CFR Parts 614, 616, 618, and 621

**RIN 3052–AB63**

## Loan Policies and Operations; Leasing; General Provisions; Accounting and Reporting Requirements

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA) through the Farm Credit Administration Board (Board) issues a proposed rule to amend its regulations that provide Farm Credit System (Farm Credit or System) institutions, including the Farm Credit Leasing Services Corporation (FCL), regulatory guidance concerning leasing activities. The proposed rule clarifies leasing authorities of System institutions and addresses issues regarding leasing raised by System institutions and FCA examiners. The proposed rule is also intended to provide clear and concise regulations pertaining to the System's leasing activities and clarify what existing regulations are applicable to leasing activities.

**DATES:** Comments should be received on or before December 15, 1997.

**ADDRESSES:** Comments may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or sent by facsimile transmission to FAX number (703) 734–5784. Comments may also be provided by electronic mail addressed to ''reg-comm@fca.gov'' on the internet. Copies of all communications received will be available for examination by interested parties in the Office of Policy Development and Risk Control, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

Robert G. Magnuson, Policy Analyst, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:** System leasing operations continue to evolve to meet the demands of agricultural and aquatic producers, cooperatives, and rural utilities. Several System institutions have inaugurated new leasing programs to meet the increased demands for leasing and provide customers with more options for financing the expansion of agricultural operations. In addition, the FCL has experienced substantial growth since 1990 because of increased demand for leases by agricultural and aquatic producers and their cooperatives.

The System's statutory leasing powers were granted to supplement its lending authorities. The leasing provisions of the Farm Credit Act of 1971, as amended (Act), remain separate authorities, however, and do not parallel the rules for lending in all respects. The proposed regulations are intended to clarify which lending regulations are applicable to leasing activities and how the rules applicable to leasing differ from those governing lending transactions. In addition, this proposal provides specific guidance for the FCL.

The FCL was chartered in 1983 as a service corporation under section 4.25 of the Act. The FCL was initially organized and owned by 14 of the 37 then existing System banks to acquire and lease assets and provide related services to eligible customers of the System. Today, it is owned by all eight of the System banks. As a service corporation, it derives its leasing authorities from the authorities of its stockholder banks that operate under titles I and III of the Act.

FCA's regulations currently address the leasing activities of System banks, associations, and the FCL by defining ''loans'' as including leases in some, but not all regulatory provisions and by generally providing that service corporations are subject to the regulations applicable to their organizing banks. This approach has conveyed the FCA's view that leasing activities should ordinarily follow the rules for lending and that the FCL should be governed by the same rules as other System lessors. This approach, while having the virtue of simplicity, has not always proved satisfactory. It does not account for the ways in which lease transactions differ from loan transactions, nor does it reflect differences between loans and leases in the Act. The proposed regulations would apply rules uniformly to all System institutions that conduct leasing activities under the same title(s) of the Act.

The existing leasing regulations in §§ 618.8050 and 618.8060 will be deleted upon the promulgation of final leasing regulations in part 616. Technical changes are made to §§ 614.4710 and 621.9 to conform with the below amendments. A discussion of the proposed amendments follows.

### I. Leasing Authorities

*1. Authority and Lessee Eligibility*

Proposed § 616.6100 implements sections 1.11(c)(2), 2.4(b)(4), and 3.7(a) of the Act, which grant express leasing authorities to various System institutions. Proposed § 616.6100(a) addresses the authority of Farm Credit Banks (FCBs), agricultural credit banks (ACBs), Federal land credit associations (FLCAs), agricultural credit associations (ACAs), and the FCL to lease facilities under section 1.11(c)(2) of the Act. Similarly, proposed § 616.6100(b) reflects the equipment leasing authority of: (1) FCBs, ACBs, and the FCL under section 1.11(c)(2) of the Act; and (2) ACAs and production credit associations (PCAs) under section

2.4(b)(4) of the Act. Proposed § 616.6100(a) and (b) reflect the statutory authority of FCBs, ACAs, PCAs, FLCAs, ACBs, and the FCL to make leases to: (1) Bona fide farmers, ranchers, or aquatic producers and harvesters; (2) processing and/or marketing operations; and (3) farm-related service businesses.

Section 1.11(c)(2) of the Act specifies that System banks may only lease facilities or equipment to persons eligible for credit under titles I or II of the Act for use in their operations. Section 2.4(b)(4) of the Act, however, specifies that associations may only lease equipment to stockholders for use in their operations. In accordance with these provisions, the scope of leasing activity by System banks and associations to bona fide farmers, ranchers, and aquatic producers and harvesters under proposed § 616.6100 is restricted to those assets used in the eligible lessee's operations.

Proposed § 616.6100(c) provides that the banks for cooperatives (BCs, ACBs, and the FCL are authorized to lease equipment to cooperatives, rural electric, telecommunication, and cable television utilities, water and waste treatment facilities, and other entities that comply with the requirements of § 613.3100(b), (c), and (d). As discussed above, the Act grants PCAs the authority to lease only equipment, and FLCAs the authority to lease only facilities, but these terms are not defined in the Act and are not always clearly distinguishable from each other. Equipment is ordinarily considered to be movable personal property. Facilities include property that is attached, often permanently, to real estate. The FCA acknowledges that certain agricultural property may have attributes of both equipment and facilities. For example, center-pivot irrigation systems may be fairly viewed as either equipment or a facility. Recognizing that agricultural ''equipment'' and ''facilities'' may in some instances overlap, the proposed rule does not attempt to provide a specific regulatory definition of equipment and facility. Instead, proposed § 616.6100(d) requires each institution to document that the leased equipment or facility is authorized to be leased under its leasing authorities. While the FCA expects each System institution involved in lending and leasing to have the necessary expertise to make such a determination, it will review these determinations as part of FCA's routine examination process.

*2. Purchase and Sale of Interests in Leases*

The current regulatory requirements for transactions involving interests in loans are in §§ 614.4325 and 614.4330. These regulations have been in effect since 1992 and establish the necessary guidance and parameters for institutions to follow for loan participations. Although the FCA believes that analogous requirements should apply to the purchase and sale of lease interests, a definition of a participation in a lease is needed.

The FCA's current regulations on loan purchases and sales do not differentiate participations in leases from participations in loans. FCA regulations define ''loan'' for purposes of subpart H of part 614 as ''any extension of credit or similar financial assistance of the type authorized under the Act, such as leases * * * and other similar transactions.'' A ''loan participation'' is defined as ''a fractional undivided interest in the principal amount of a loan that is sold by a lead lender to a participating institution in accordance with the requirements of § 614.4330 of this subpart.'' Although the definition of a ''loan'' in § 614.4325(a)(3) specifically includes ''leases,'' the definition of a ''loan participation'' in § 614.4325(a)(4) does not, by its terms, address the very different structure of a lease.

In leases, there is no separately identified ''principal'' and ''interest.'' Instead, the lessor receives a stream of lease payments, and a purchase price (if a purchase option is exercised) or the return of the leased asset (if a purchase option is not exercised). Since leases are structured differently than loans, the FCA proposes a definition of a ''lease participation'' that addresses the different structure of a lease transaction and provides sufficient flexibility to cover lease situations that are analogous to a ''fractional undivided interest in the principal amount'' of a loan. Viewed from the lessor's perspective, a lease has two primary components, the stream of lease payments and the residual value. These two components of a lease, lease payments and residual value, do not correspond neatly to the concepts of interest, principal, and collateral in a loan transaction. Because each of these components of a lease has distinct characteristics and risks, the FCA believes that it is appropriate to consider interests in leases to be lease participations when they represent a fractional undivided interest in the whole of either or both of these two components. Accordingly, the FCA proposes to define a lease participation in § 616.6000(d) as a fractional undivided interest in: (1) All of the lease payments; (2) the residual value of all of the property leased; or (3) all of the lease payments and the residual value of all of the property leased.

Other than the new definition of participation in § 616.6000(d), the proposed lease participation regulations contained in § 616.6110 closely parallel most of the provisions of §§ 614.4325 and 614.4330 governing loan participations, except for the provisions concerning ''collateral'' or other loan specific concepts.

Amendments to the Act in 1992 and 1994 granted System institutions authority to participate in financing provided to similar entities. The regulations implementing this recent authority for loans are found in § 613.3300 of this chapter. The FCA believes that participations in leases made to similar entities are also authorized by the recent amendments to the Act. The proposed regulations address similar entity lease participations for the first time. New provisions concerning purchasing interests in leases made to similar entities are proposed at § 616.6110(g). The proposed provisions are generally parallel to the provisions of § 613.3300 that apply to loan participations. Proposed § 616.6110(g) identifies the terminology changes necessary to apply the regulation to similar entity lease participations.

The proposed lease participation regulations set forth in § 616.6115 apply the provisions of § 614.4330 with minor changes in terminology to lease participations.

*3. Out-of-Territory Leases*

Farm Credit institutions seeking to provide loan services to borrowers outside their respective chartered territories are required to coordinate such activities with other Farm Credit institutions offering similar lending services in those territories. Proposed § 616.6120 provides that a Farm Credit bank or association that conducts leasing activities outside its chartered territory is subject to the same requirements that § 614.4070 imposes on out-of-territory loans.

As a service corporation owned by the eight System banks, the FCL is chartered to do business nationwide. Therefore, it is not subject to out-of-territory requirements. The proposed regulations do not require other Farm Credit institutions to notify or obtain concurrence from the FCL with respect to out-of-territory leases. The FCA believes this is appropriate, because the FCL does not have exclusive leasing authority in a particular geographic

territory but provides leasing services concurrently with other System institutions.

**II. Lease Operations**

*1. Leasing Policies and Underwriting Standards*

Proposed § 616.6200 would require System institutions engaged in leasing to adopt written policies and underwriting standards governing such activity to ensure that all risks associated with leasing are properly managed. There are many similarities between the credit risk of a loan and the payment risk of a lease. In each case, the borrower's or lessee's ability to make the contractual payments is a primary concern. Therefore, some aspects of the primary payment analysis required of a lessor are similar to the analysis appropriate for a lender making a loan. The most significant difference is that in leasing, not only is there the risk associated with the lessee's ability to service its contractual lease obligation, but there is the additional risk associated with establishing the appropriate residual values on the equipment or facility and the ultimate remarketing of the leased property. Therefore, from a safety and soundness perspective, System institutions engaged in leasing need to have adequate policies and procedures that address both loan and lease underwriting to ensure prudent management of both activities.

From a payment risk perspective, the proposed rule requires System institutions engaged in leasing to comply with the minimum loan underwriting standards in part 614 regarding the minimum amount of financial information required of the applicant since the risks are very similar for both loans and leases. The loan underwriting regulations [1] would require written policies and procedures to address underwriting standards such as the minimum supporting credit information required, credit analysis procedures, and repayment capacity of the applicant.

In addition to requiring institutions to exercise due diligence in reviewing the applicant's ability to make payments as required under part 614, the proposed rule also requires institutions engaged in leasing to adopt policies and underwriting standards that address the unique risks associated with lease transactions. These additional risks include things such as the establishment of residual values of the leased property, the types of equipment leased, remarketing of leased property, tax treatment of lease transactions, and liability associated with ownership. The proposed rule provides only a minimum framework. The complexity and depth of the policies and underwriting standards should be consistent with the current or planned leasing activity and the institution's risk-bearing ability.

*2. Investment in Leased Assets*

Proposed § 616.6210 authorizes an institution to purchase property to lease if the acquisition is consistent with the type of leasing being conducted or planned in the future. The purpose of this provision is to prohibit System institutions from speculating in the acquisition of property or facilities.

*3. Lending and Leasing Limits*

The FCA believes that a consistent approach should be applied to financial risks in all System institutions, including the FCL, to properly limit any concentration of risk. Limits on the amount of financing (whether in the form of loans or leases) a System institution can provide to any one customer protect against unnecessarily large risks to an institution's capital. The proposed regulatory changes would limit an institution's exposure to risk from a single lessee or borrower, and prescribe consistent standards for leases in all types of System institutions.

Section 616.6220 of the proposed regulations refers to the lending and leasing limit regulations in subpart J of part 614. The proposed regulations would amend subpart J in order to make it clear that the lending limits apply to all leases made by System banks and associations. The FCA proposes to modify the title of subpart J to be ''Lending and Leasing Limits,'' and to make conforming changes throughout the subpart. The FCA believes all System institutions should have a single limit that applies to all types of financial obligations. Both loans and leases should be measured against this limit when calculating how much risk an institution can absorb from a single customer. Likewise, all loans and leases to a single borrower should be attributed to that customer when calculating the total risk against the institutions' lending and leasing limit.

In § 614.4350(a) the definition of ''borrower'' would be amended to clarify that, for the purposes of this subpart, the term ''borrower'' includes any customer to whom an institution has made a lease or a commitment to make a lease. In § 614.4350(c) the definition of ''loan'' is proposed to be amended to include all types of leases (operating, financing, and lease interests.)

In §§ 614.4352 through 614.4355, proposed changes to clarify that a System institution is prohibited from making a lease or a loan if the consolidated amount of all loans and leases to a single customer exceeds a specific percentage of the institution's lending and leasing limit base.

A new § 614.4356 is proposed that prescribes standard leasing limits for the FCL. The proposed regulation prohibits the FCL from making leases to a single customer that exceed 25 percent of the FCL's leasing limit base. This requirement is similar to the risk exposure allowed for other System institutions.

In proposed § 614.4358(a)(1), outstanding lease balances are added to the items included in the computation of obligations. In § 614.4358(b), the FCA proposes to add a new paragraph to address certain exclusions from the lending and leasing limits regarding participations or interests sold in leases. The proposed regulation at § 614.4358(b)(5) allow interests in leases sold, including participation interests, to be excluded from leases to a customer subject to the lending and leasing limit when the sale agreement meets specific requirements. This exclusion is based on the premise that the institution originating the lease retains some interest in the lease, whether it is in the lease payments or residual value. To the extent that such an interest is retained, the originating institution may exclude that portion of the lease payments or residual interests in which it no longer has a legitimate ownership interest. In § 614.4360, the FCA proposes to add a new paragraph (d) to clarify that all leases, except those that are permitted under § 614.4361, must be in compliance with the limits at all times.

*4. Portfolio Limitations*

Under proposed § 616.6230, the restrictions in sections 1.11(a)(2) and 2.4(a)(1) of the Act would apply to leases that FCBs, ACBs, direct lender associations, and the FCL make to agricultural or aquatic producers who supply less than 20 percent of the throughput to a processing and/or marketing operation. More specifically, leases by Farm Credit banks and direct lender associations to customers who supply less than 20 percent of the throughput used in a processing and/or marketing operation would be subject to the 15-percent portfolio ceiling in § 613.3010(b)(2). Furthermore, proposed § 616.6230(b) places this same 15-percent portfolio limitation on the FCL

[1] Final loan underwriting regulations are currently under consideration by the FCA. See the proposed rule published in the **Federal Register** on April 15, 1996 (61 FR 16403).

for its leases made to processing and/or marketing operations eligible under § 613.3010.

*5. Stock Purchase Requirements*

The Act authorizes FCBs to lease facilities and equipment to ''persons eligible for credit.'' The Act authorizes PCAs and BCs, respectively, to lease equipment to ''stockholders,'' but does not prescribe any minimum stock requirements for leases. Accordingly, the FCA concludes that lessees who lease equipment from PCAs, ACAs, BCs, or ACBs under titles II and III must be stockholders.

Because the minimum stock purchase requirement under section 4.3A(c)(1)(E) does not apply to leases, the FCA has determined that the purchase of a single share is sufficient to satisfy the stock requirement. Institutions may satisfy the minimum stock requirement by counting outstanding shares stockholders already own in the institution making the lease. The minimum stock requirement in proposed § 616.6240(a) does not apply to the FCL due to its stockholders being System banks, and not its lease customers. The FCA also proposes that the disclosure requirements for equities issued as a condition of obtaining a lease are the same as disclosure requirements for equities issued as a condition of obtaining a loan as required under § 615.5250 (a) and (b) of this chapter.

*6. Disclosure Requirements*

The FCA has concluded that the borrower rights provisions of the Act do not apply to leases, because the borrower rights provisions of the Act explicitly refer to ''loans,'' but not leases. Significantly, lessees have no ownership rights in the leased equipment or facilities during the term of the lease, and thus, many of the borrower rights provisions such as those pertaining to restructuring or right of first refusal are not applicable to leasing.

However, proposed § 616.6250(a) does require that lease applicants be provided, at a minimum, a copy of all lease documents signed by the lessee, not later than the time of lease closing. In addition, proposed § 616.6250(b) requires a System institution to render its decision on the lease application in as expeditious a manner as is practical. The proposed rule also requires a System institution to provide prompt written notice of its decision to the applicant.

**List of Subjects**

*12 CFR Part 614*

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

*12 CFR Part 616*

Agriculture, Banks, banking, leasing.

*12 CFR Part 618*

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

*12 CFR Part 621*

Accounting, Agriculture, Banks, banking, Penalties, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, it is proposed that parts 614, 618 and 621 be amended and part 616 be added to chapter VI, title 12 of the Code of Federal Regulations to read as follows:

## PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 is revised to read as follows:

**Authority:** 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

2. The heading of subpart J is revised to read as follows:

### Subpart J—Lending and Leasing Limits

3. Section 614.4350 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 614. 4350 Definitions**.

* * * * *

(a) *Borrower* means an individual, partnership, joint venture, trust, corporation, or other business entity (except a Farm Credit System association or other financing institution, as defined in § 614.4540) to which an institution has made a loan or a commitment to make a loan either directly or indirectly. For the purposes of this subpart, the term ''borrower'' includes any customer to which an institution has made a lease or a commitment to make a lease.

* * * * *

(c) *Loan* means any extension of, or commitment to extend, credit authorized under the Act whether it results from direct negotiations between a lender and a borrower or is purchased from or discounted for another lender, including participation interests. The term ''loan'' includes loans and leases outstanding, obligated but undisbursed commitments to lend or lease, contracts of sale, notes receivable, other similar obligations, guarantees, and all types of leases. An institution ''makes a loan or lease'' when it enters into a commitment to lend or lease, advances new funds, substitutes a different borrower or lessee for a borrower or lessee who is released, or where any other person's liability is added to the outstanding loan, lease or commitment.

* * * * *

**§ 614.4351 [Amended]**

4. Section 614.4351 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit base'' each place they appear in the heading and the entire section.

**§ 614.4352 [Amended]**

5. Section 614.4352 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit base'' in paragraphs (a) and (b)(1), and by adding the words ''and leasing'' between the words ''lending'' and ''limits'' in paragraph (b)(2).

**§ 614.4353 [Amended]**

6. Section 614.4353 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit base.''

**§ 614.4354 [Amended]**

7. Section 614.4354 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit base.''

**§ 614.4355 [Amended]**

8. Section 614.4355 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit base'' in the introductory paragraph, and by removing the word ''lending'' in the headings of paragraphs (a) and (b).

**§§ 614.4356–614.4360 [Redesignated]**

9. Subpart J is amended by redesignating § 614.4356 through

§ 614.4360 as § 614.4357 through § 614.4361, and by adding a new § 614.4356 to read as follows:

**§ 614.4356 Farm Credit Leasing Services Corporation.**

The Farm Credit Leasing Services Corporation may enter into lease agreements if the consolidated amount of all leases and undisbursed commitments to a single lessee or any related entities does not exceed 25 percent of its leasing limit base.

10. Newly designated § 614.4358 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit'' in the introductory text of paragraphs (a) and (b); by adding the words ''lease balances outstanding'' after the word ''loans'' the first place it appears in paragraph (a)(1); by removing the reference ''§ 614.4358'' and adding in its place the reference ''§ 614.4359'' in paragraph (a)(3); by redesignating existing paragraph (b)(5) as (b)(6); and by adding new paragraph (b)(5) to read as follows:

**§ 614.4358 Computation of obligations.**

(b) * * *

(5) Interests in leases sold, including participation interests, when the sale agreement meets the following requirements:

(i) The interest sold must be a fractional undivided interest in all the lease payments, the residual value of all the leased property, or both;

(ii) The interest must be sold without recourse; and

(iii) The agreement under which the interest is sold must provide for the sharing of all payments on a pro rata basis according to the percentage interest in the lease.

* * * * *

**§ 614.4359 [Amended]**

11. Newly designated § 614.4359 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit(s)'' in paragraphs (a) introductory text, (b), and (c); by removing the reference ''§ 614.4356'' and adding in its place, the reference ''§ 614.4357'' in paragraph (a)(1)(iii), and by removing the reference ''§ 614.4358'' and adding in its place, the reference ''§ 614.4359'' in the heading for column two in Table 1.

12. Newly designated § 614.4360 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit'' in the heading and in paragraphs (a), (b), (c), and (d); by revising the reference ''§ 614.4360'' and adding in its place, the reference ''§ 614.4361'' in paragraph (a); by removing the reference ''§ 614.4359(b)(3)'' and adding in its place, the reference ''§ 614.4360(b)(3)'' in paragraph (c); and by redesignating paragraph (d) as paragraph (e); and by adding a new paragraph (d) to read as follows:

**§ 614.4360 Lending and leasing limit violations.**

* * * * *

(d) All leases, except those that are permitted under the provisions of § 614.4361, reading ''effective date of this subpart'' in § 614.4361(a) and ''effective date of these regulations'' in § 614.4361(b) as ''effective date of this amendment,'' shall be in compliance with the lending and leasing limit on the date the lease is made, and at all times thereafter.

* * * * *

**§ 614.4361 [Amended]**

13. Newly designated § 614.4361 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit(s)'' in each place they appear in paragraphs (a) and (b), and by removing the reference ''§ 614.4359'' and adding in its place, the reference ''§ 614.4360'' in paragraph (b).

## Subpart O—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

**§ 614.4710 [Amended]**

14. Section 614.4710 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limits'' in the last sentence of the introductory paragraph and in paragraphs (a)(2) and (a)(3).

15–16. A new part 616 is added to read as follows:

# PART 616—LEASING

### Subpart A—Leasing Authorities

Sec.



### Subpart B—Leasing Operations



**Authority:** Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.9, 3.10, 3.20, 3.28, 4.3, 4.3A, 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.3, 7.6, 7.8, 7.12, 7.13 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2130, 2131, 2141, 2149, 2154, 2154a, 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279a-3, 2279b, 2279c-1, 2279f, 2279f-1).

## Subpart A—Leasing Authorities

**§ 616.6000 Definitions.**

For the purposes of this part, the following definitions shall apply:

(a) *Interests in leases* means ownership interests in any aspect of a lease transaction, including servicing rights.

(b) *Lead lessor* means an institution having a direct contractual relationship with a lessee to make a lease, which institution sells or assigns an interest or interests in such lease to one or more other lessors.

(c) *Lease* means any contractual obligation to own and lease, or lease with the option to purchase, equipment or facilities.

(d) *Lease participation* means, with respect to a lease that is sold by a lead lessor to a participating institution in accordance with the requirements of § 616.6100, a fractional undivided interest in:

(1) All of the lease payments;

(2) The residual value of all of the property leased; or

(3) All of the lease payments and the residual value of all of the property leased.

(e) *Participating institution* means an institution that purchases a lease participation originated by another lessor.

(f) *Sale with recourse* means a sale of a lease or an interest in a lease in which the seller:

(1) Retains some risk of loss from the transferred asset for any cause except the seller's breach of usual and customary warranties or representations designed to protect the purchaser against fraud or misrepresentation; or

(2) Has an obligation to make payments to any party resulting from:

(i) Default on the lease by the lessee or guarantor or any other deficiencies in the lessee's performance;

(ii) Changes in the market value of the assets after transfer;

(iii) Any contractual relationship between the seller and purchaser incident to the transfer that, by its terms, could continue even after final payment, default, or other termination of the assets transferred; or

(iv) Any other cause, except the retention of servicing rights alone shall not constitute recourse.

**§ 616.6100 Authority and lessee eligibility.**

(a) *Facility leases.* Farm Credit Banks, agricultural credit banks, Federal land credit associations, agricultural credit associations, and the Farm Credit Leasing Services Corporation may own and lease, or lease with option to purchase, to any person or entity that is eligible to borrow under §§ 613.3000, 613.3010, or 613.3020 of this chapter, facilities needed in the operations of that person or entity.

(b) *Equipment leases.* Farm Credit Banks, agricultural credit banks, production credit associations, agricultural credit associations, and the Farm Credit Leasing Services Corporation may own and lease, or lease with option to purchase, to any person or entity that is eligible to borrow under §§ 613.3000, 613.3010, or 613.3020 of this chapter, equipment needed in the operations of that person or entity.

(c) *Equipment leases under title III of the Act.* Agricultural credit banks, banks for cooperatives, and the Farm Credit Leasing Services Corporation may own and lease, or lease with option to purchase, to cooperatives and other entities that comply with the requirements of § 613.3100 (b), (c), and (d) of this chapter, equipment needed in the operations of those cooperatives or other entities.

(d) *Documentation.* Each institution shall adequately document that the leased asset is within its statutory authority to lease equipment or facilities.

**§ 616.6110 Purchase and sale of interests in leases.**

(a) *Authority to purchase and sell interests in leases.* Leases and interests in leases may only be sold in accordance with each institution's leasing authorities, as set forth in § 616.6100. No Farm Credit System institution may purchase from an institution that is not a Farm Credit System institution any interest in a lease, unless the interest is a participation interest that qualifies under the institution's leasing authority, as set forth in § 616.6100, and meets the requirements of § 616.6115.

(b) *Policies.* Each Farm Credit System institution that is authorized to sell or purchase interests in leases under this subpart shall exercise that authority in accordance with a policy adopted by its board of directors that addresses the following matters:

(1) The types of purchasers to which the institution is authorized to sell interests in leases;

(2) The types of leases in which the institution may purchase or sell an interest and the types of interests which may be purchased or sold;

(3) The underwriting standards to be applied in the purchase of interests in leases;

(4) Such limitations on the aggregate lease payments and/or residual amount of interests in leases that the institution may purchase from a single institution as are necessary to diversify risk, and such limitations on the aggregate amounts the institution may purchase from all institutions as are necessary to assure that service to the territory is not impeded;

(5) Provision for the identification and reporting of leases in which interests are sold or purchased;

(6) Requirements for providing and securing in a timely manner adequate financial and other information needed to make an independent judgment; and

(7) Any limitations or conditions to which sales or purchases are subject that the board deems appropriate, including arbitration.

(c) *Purchase and sale agreements.* Agreements to purchase or sell an interest in a lease shall, at a minimum:

(1) Identify the particular lease(s) to be covered by the agreement;

(2) Provide for the transfer of lessee information on a timely and continuing basis;

(3) Identify the nature of the interest(s) sold or purchased;

(4) Set forth the rights and obligations of the parties and the terms and conditions of the sale; and

(5) Contain any terms necessary for the appropriate administration of the lease and the protection of the interests of the Farm Credit System institution.

(d) *Independent judgment.* Each institution that purchases an interest in a lease shall make a judgment on the payment ability of the lessee that is independent of the originating or lead lessor and any intermediary seller or broker prior to the purchase of the interest and prior to any servicing action that alters the terms of the original agreement, which judgment shall not be delegated to any person(s) not employed by the institution. A Farm Credit System institution that purchases a lease or any interest therein may use information, such as appraisals or inspections, furnished by the originating or lead lessor, or any intermediary seller or broker; however, the purchasing Farm Credit System institution shall independently evaluate such information when exercising its independent judgment. The independent judgment shall be documented by a payment analysis that considers factors set forth in § 616.6200 and is independent of the originating institution and any intermediary seller or broker. The payment analysis shall consider such financial and other lessee information as would be required by a prudent lessor and shall include an evaluation of the capacity and reliability of the servicer. Boards of directors of jointly managed institutions shall adopt procedures to ensure that the interests of their respective shareholders are protected in participation between such institutions.

(e) *Limitations.* The aggregate interests in lease payments or residual values of leases purchased from a single lead lessor and the aggregate interests in lease payments or residual values in leases purchased from other institutions shall not exceed the limits set in the institution's policy.

(f) *Sales with recourse.* When a lease or interest in a lease is sold with recourse, it shall be accorded the following treatment:

(1) The lease shall be considered, to the extent of the recourse or guaranty, a lease by the purchaser to the seller, as well as a lease from the seller to the lessee, for the purpose of determining whether total leases to a lessee are within the lending or leasing limits established in subpart J of part 614.

(2) The amount of the lease subject to the recourse agreement shall be considered a lease sold with recourse for the purpose of computing permanent capital ratios.

(g) *Similar entity lease transactions.* The provisions of § 613.3300 of this chapter that apply to interests in loans made to similar entities shall apply to interests in leases made to similar entities. In applying these provisions, the term ''loan'' shall be read to include the term ''lease'' and the term ''principal amount'' shall be read to include the term ''lease amount.''

**§ 616.6115 Lease participations.**

Agreements to purchase or sell a lease participation interest shall be subject to the provisions of § 616.6110, and, in addition, shall satisfy the requirements of this section.

(a) *Participation agreements.* Agreements to purchase or sell a participation interest in a lease shall, in addition to meeting the requirements of § 616.6110(c), at a minimum:

(1) Define the duties and responsibilities of the participating institution and the lead lessor, and/or the servicing institution, if different from the lead lessor.

(2) Provide for lease servicing and monitoring of the servicer;

(3) Set forth authorization and conditions for action in the event of lessee distress or default;

(4) Provide for sharing of risk;

(5) Set forth conditions for the offering and acceptance of the lease participation and termination of the agreement;

(6) Provide for sharing of fees, and costs between participating institutions;

(7) Provide for a method of resolution of disagreements arising under the agreement between two or more institutions;

(8) Specify whether the contract is assignable by either party; and

(9) Provide for the issuance of certificates evidencing an undivided interest in a lease.

(b) *Retention requirement.* No participation interest may be purchased from an institution that is not a Farm Credit System institution unless the servicing institution has an ownership interest in the lease payments and/or residual amount equal to the lesser of 10 percent of the lease payments and/or residual amount or such lesser amount as represents the servicing institution's leasing limit, which ownership interest cannot be assigned separately from the servicing rights.

(c) *Intrasystem participations.* Leases participated between or among Farm Credit System institutions shall meet the lessee eligibility, membership, lease term, lease amount, and stock purchase requirements of the originating lessor.

**§ 616.6120 Out-of-territory leasing.**

The out-of-territory consent and notification requirements of § 614.4070 of this chapter shall apply to leases. Institutions shall obtain consent from at least one institution that, at the time the lease is executed, offers similar leasing services in the territory. Institutions are not required to obtain concurrence from or provide notification to the Farm Credit Leasing Services Corporation when making out-of-territory leases.

## Subpart B—Leasing Operations

**§ 616.6200 Leasing policies and underwriting standards.**

The board of each institution engaged in lease underwriting shall set forth written policies and procedures governing such activity that reflect prudent lease practices that control risk and comply with all applicable laws and regulations. Any leasing activity shall comply with the requirements under the lending policies and loan underwriting standards in part 614 of this chapter. Institutions engaged in the making, purchasing, or syndicating of leases also must establish written policies and procedures that address the additional risks associated with leasing. Written underwriting policies and procedures shall address the following, if applicable:

(a) Financial condition, capacity and integrity of the applicant;

(b) Repayment capacity of the applicant;

(c) Appropriateness of the lease amount, purpose, and terms and conditions;

(d) Establishment of a prudent residual value at the inception of the lease and the related process of estimating the leased asset's market value during the lease term;

(e) Types of equipment and facilities the institution will lease;

(f) Remarketing of leased property and associated risks;

(g) Property tax and sales tax reporting;

(h) Title and ownership of leased assets;

(i) Title and licensing for motor vehicles;

(j) Liability associated with ownership, including any environmental hazards or risks;

(k) Insurance requirements for both the lessor and lessee;

(l) Classification of leases in accordance with generally accepted accounting principles; and

(m) Tax treatment of lease transactions and associated risks.

**§ 616.6210 Investment in leased assets.**

An institution may acquire property to be leased, if the acquisition of the property is consistent with the leasing then conducted by the institution or is consistent with a business plan for expansion of the institution's existing leasing business or for entry into the leasing business.

**§ 616.6220 Leasing limits.**

All leases made by Farm Credit System institutions shall be subject to the lending and leasing limits prescribed in subpart J of part 614 of this chapter.

**§ 616.6230 Portfolio limitations.**

(a) Leases that Farm Credit banks and direct lender associations make under § 616.6100 (a) or (b) to processing or marketing operations shall be subject to the requirements of § 613.3010(b) of this chapter, reading the term ''loan'' to include the term ''lease'' and the term ''borrower'' to include ''lessee.''

(b) Processing and/or marketing leases that the Farm Credit Leasing Services Corporation makes to eligible lessees who supply, on a regular basis, less than 20 percent of the throughput shall be subject to the requirements of § 613.3010 (b)(1) and (b)(3) of this chapter, reading the term ''lease'' in the place of the term ''loan.''

**§ 616.6240 Stock purchase requirements.**

(a) Each System institution making an equipment lease under titles II or III of the Act shall require the lessee to purchase at least one share of stock in accordance with its bylaws, unless the lessee already owns stock in the institution making the lease. This provision does not apply to the Farm Credit Leasing Services Corporation.

(b) The disclosure requirements of § 615.5250 (a) and (b) of this chapter shall apply to stock purchased as a condition for obtaining a lease.

**§ 616.6250 Disclosure requirements.**

(a) Each System institution shall furnish to each lessee a copy of all lease documents signed by the lessee in connection with the lease, not later than the time of lease closing.

(b) Each System institution shall render its decision on a lease application in as expeditious a manner as is practical. Upon reaching a decision on a lease application, the institution shall provide prompt written notice of its decision to the applicant. Where the lessor makes an adverse decision on a lease application, the notice shall include the specific reasons for the institution's action.

## PART 618—GENERAL PROVISIONS

17. The authority citation for part 618 continues to read as follows:

**Authority:** Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

## Subpart C—Leasing

**§§ 618.8050 and 618.8060 Subpart C [Removed and Reserved]**

18. Subpart C, consisting of §§ 618.8050 and 618.8060, is removed and reserved.

## PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

19. The authority citation for part 621 continues to read as follows:

**Authority:** Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11).

## Subpart C—Loan Performance and Valuation Assessment

**§ 621.7 [Amended]**

20. Section 621.7 is amended by removing the reference ''§ 614.4358(a)(2)'' and adding in its place, the reference ''§ 614.4359(a)(2)'' in paragraph (a)(2)(iii).

Dated: October 8, 1997.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 97–27146 Filed 10–14–97; 8:45 am]

**BILLING CODE 6705–01–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 25

**[REG–209823–96]**

**RIN 1545–AU25**

## Guidance Regarding Charitable Remainder Trusts; Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Change of time and locations of public hearing; teleconferencing

**SUMMARY:** This document changes the time and location of the public hearing on the proposed regulations regarding charitable remainder trusts under section 664 of the Internal Revenue Code and special valuation rules of interests in trusts under section 2702. In addition, this document announces that the Washington, DC location for the public hearing will have teleconferencing equipment and that there will be a remote teleconference site in Los Angeles, CA.

**DATES:** The public hearing will be held on November 18, 1997, beginning at 1 p.m. (ET), 10 a.m. (PT). Additional requests to speak and outlines of oral comments must be received by November 3, 1997.

**ADDRESSES:** The Washington, DC site for the public hearing is room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. The Los Angeles, CA remote teleconference site is the Federal Building, 5th Floor, Room 5003, 300 N. Los Angeles Street, Los Angeles, CA.

Requests to speak and outlines of oral comments should be mailed to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:R [REG–209823–96], Room 5226, Washington, D.C., 20044.

**FOR FURTHER INFORMATION CONTACT:** Evangelista Lee of the Regulations unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing, appearing in the **Federal Register** on Friday, April 18, 1997, (62 FR 19072), announced that a public hearing on the proposed regulations relating to charitable remainder trusts and special valuation rules of transfers of interests in trusts would be held on Tuesday, September 9, 1997, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building 1111 Constitution Avenue, NW, Washington, DC. Subsequent to receiving a request to teleconference the hearing to Los Angeles, CA, the IRS published a notice in the **Federal Register** on Tuesday, August 19, 1997, (62 FR 44103) announcing that the hearing was postponed to afford interested persons the opportunity to request that the IRS teleconference the hearing to other locations outside Washington, DC.

The date, time, and addresses of the teleconference public hearing are set forth above. Attendees will be admitted beyond the lobby of the Internal Revenue Building in Washington, DC after 12:30 p.m. (ET), and to the teleconference site in Los Angeles, CA after 9:30 a.m. (PT).

There is limited seating capacity at both the Washington, DC and Los Angeles sites. In particular, it should be noted that no more than 12 people may be accommodated at any one time in the teleconference room in Los Angeles. Seating at both sites will be made available based on the order of presentations, and IRS personnel will be present to assist speakers in using the teleconference equipment.

The IRS will distribute for no charge at the hearing an agenda showing the scheduling of speakers. Testimony will begin in Los Angeles and will conclude with presentations by speakers in Washington, DC.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 97–27138 Filed 10–14–97; 8:45 am]

**BILLING CODE 4830–01–U**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 157–0050b; FRL–5907–6]**

## Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Santa Barbara County Air Pollution Control District, California

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the California State Implementation Plan (SIP). The revision concerns the Operating Permits Program rule revision submitted by the California Air Resources Board (CARB) on behalf of the Santa Barbara County Air Pollution Control District (Santa Barbara or District) pursuant to Clean Air Act (CAA) sections 110 and 112(l).

In the final rules section of this **Federal Register**, the EPA is approving the states's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed action, no further activity is contemplated in relation to this proposal. If EPA receives adverse comments, the direct final approval will be withdrawn and all public comments received will be addressed in a subsequent final action based on this proposal. EPA will not institute a second public comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by November 14, 1997.

**ADDRESSES:** Written comments on this action should be addressed to: John Walser, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approvals are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

Permitting Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

California Air Resource Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 94105;

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117

**FOR FURTHER INFORMATION CONTACT:** John Walser (telephone 415/744–1257), Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

**SUPPLEMENTARY INFORMATION:** EPA is proposing to approve the following rules into the SIP: Rule 370—Potential to Emit—Limitations for Part 70 sources.

For further information, please see the information provided in the direct final action which is located in the rules section of this **Federal Register**.

Dated: September 26, 1997.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 97–27266 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MD 040–3017b; FRL–5905–9]**

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Yeast Manufacturing, Screen Printing, Expandable Polystyrene Operations and Bakeries

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the State of Maryland for the purpose of establishing reasonably available control technology (RACT) volatile organic compound (VOC) emission control requirements for yeast manufacturing, screen printing, expandable polystyrene operations (EPO), and bakeries. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by November 14, 1997.

**ADDRESSES:** Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Donahue, (215) 566–2095, at the EPA Region III office address listed above, or via e-mail at donahue.carolyn@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title, pertaining to Maryland's regulations for yeast manufacturing, screen printing, EPOs, and bakeries, which is located in the Rules and Regulations Section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: September 26, 1997.

**Marcia E. Mulkey,**

*Acting Regional Administrator, Region III.*

[FR Doc. 97–27259 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 61

**RIN 3067–AC73**

### National Flood Insurance Program (NFIP); Standard Flood Insurance Policy

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Correction to proposed rule.

**SUMMARY:** This document contains corrections to the proposed rule that was published Tuesday, October 7, 1997, (62 FR 52304). The proposed rule related to the increase of the deductible under the Standards Flood Insurance Policy from $750 to $1,000 for structures eligible for subsidized coverage.

**DATES:** All comments received on or before November 7, 1997 will be considered before final action is taken on the proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, (202)646–3422, (facsimile) (202)646–4327.

**SUPPLEMENTARY INFORMATION:**

#### Background

The proposed rule would increase the deductible from $750 to $1,000 under the Standard Flood Insurance Policy for structures eligible for subsidized coverage. Section 1308(b) of the National Flood Insurance Act of 1968 as amended (42 U.S.C. 4015) limits subsidized premium rates to structures built on or before December 31, 1974, or the effective date of the Flood Insurance Rate Map, whichever is later.

#### Need for Correction

As published, the proposed rule contains errors with respect to the statutory date and is in need of correction.

#### Correction of Publication

Accordingly, the publication of proposed rule on October 7, 1997, which is the subject of FR Doc. 97–26527, is corrected as follows:

Paragraph C. of Article 7 of Appendix A (1) of 44 CFR Part 61 [Corrected]

On page 52305, Paragraph C. of Article 7 of Appendix A (1) to Part 61, in the tenth line ''December 31, 1994'' is corrected to read ''December 31, 1974''.

On page 52305, Paragraph C. of Article 7 of Appendix A (2) to Part 61, in the tenth line ''December 31, 1994'' is corrected to read ''December 31, 1974''.

On page 52305, Paragraph C. of Article 7 of Appendix A (3) to Part 61, in the seventh and eighth lines ''December 31, 1994'' is corrected to read ''December 31, 1974.''

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance''; No. 83.516, ''Disaster Assistance'')

Dated: October 8, 1997.

**Edward T. Pasterick,**

*Acting Executive Administrator, Federal Insurance Administration.*

[FR Doc. 97–27254 Filed 10–14–97; 8:45 am]

BILLING CODE 6718–03–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[I.D. 100897A]**

### Atlantic Sea Scallop Fishery; Public hearings

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

**ACTION:** Notice of public hearings; request for comments.

**SUMMARY:** The New England Fishery Management Council (Council) will hold public hearings to receive comments on Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The amendment proposes to allow a one-time transfer of days-at-sea (DAS) among vessels holding limited access sea scallop permits, and the addition of closed area management under the framework adjustment program.

**DATES:** Written comments should be submitted on or before November 17, 1997, to the address below. Hearings are scheduled to be held from October 24 through November 3, 1997. See **SUPPLEMENTARY INFORMATION** for dates and times of the hearings.

**ADDRESSES:** Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906. Clearly mark the outside of the envelope ''Comments on Sea Scallop Amendment 7 Public Hearing Document.''

The hearings will be held in Maine, North Carolina, Virginia, New Jersey, and Massachusetts. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, (781)-231-0422.

**SUPPLEMENTARY INFORMATION:** The purpose of DAS consolidation is to lessen the economic impact of expected DAS reductions and other measures developed to end the overfishing of scallops. The minimum number of days that full-time scallop dredge operations require to cover fixed as well as operating costs during a year is called the break-even DAS. Under present resource conditions and with no access to areas closed for groundfish conservation, the average break-even DAS level for a full-time (full-use) vessel greater than 150 gross registered tons is estimated to be 183 DAS. Therefore, many full-time vessels will not be able to break-even when their DAS allocations are reduced to 142 DAS or possibly lower.

The objective is to help scallop vessels remain economically viable. By allowing days to be sold, some boat owners could leave the scallop fishery without incurring a complete financial loss, while fishermen buying days could add to their allocation and enhance their economic opportunities. Reductions in fishing effort and the associated reductions in fishing mortality, however, must remain consistent with the conservation goals of the FMP and the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The Council is considering several alternative proposals for inclusion in Amendment 7 to the FMP.

Amendment 7 also would include closed area management in the list of the types of measures which may be implemented through the framework adjustment process. The proposed action would allow the Council to use closed areas to achieve scallop management objectives. As part of this proposal, vessel monitoring systems (VMS) would be required for all scallop vessels fishing in or adjacent to closed areas.

The Council may want to use closed area management for the following reasons:

*Access to groundfish closed areas* - Although scallop vessels have been prohibited from fishing in these closed areas because of their potential bycatch of groundfish and potential disruption to groundfish spawning, the Council also is considering the impacts of the closed areas on the currently overfished scallop resource. Additional groundfish management concerns such as habitat will have to be addressed before access is permitted.

*Grow-out closed areas* - To establish areas to protect small scallops for a specified period of time to enhance yield per recruit.

*Seeding closed areas* - To establish areas to enhance the scallop resource through the seeding of small scallops.

*Spawning protection closed areas* - To possibly protect grounds with concentrations of large, relatively productive spawners by leaving them undisturbed for a period of time.

In addition to management measures that may be implemented through framework adjustment, the Council may consider layover days and restrictions on landing in-shell scallops from closed areas.

## Fishing Effort Consolidation Management Alternatives

The proposal identified by the Council as its preferred alternative would allow only active DAS to be sold. Active days are the percentage of the allocated DAS actually fished by a scallop vessel during the period March 1, 1994, through March 1, 1997. A second alternative would allow the sale of active DAS as well as latent DAS (those DAS allocated to a vessel but not used).

DAS consolidation include: (1) Transfers limited to active DAS (in blocks of 10 DAS), used from March 1994 to March 1997 and averaging the two best fishing years, which may be traded only once until February 28, 2001, with a framework adjustment for suspension/extension of this program. (2) Transfer may occur between different scallop limited access categories but there will be individual vessel usage limits for each category set at 240 DAS for full-time permits, 96 DAS for part-time permits, and 20 DAS for occasional permits (e.g., double the year-seven DAS allocation under the Amendment 4 schedule). (3) No conservation tax (an automatic percentage reduction in DAS transferred). (4)

Transferred DAS will be adjusted by the ratio of the average horsepower of each vessel's horsepower group. The total DAS would be adjusted, first by subtracting the DAS from the selling boat, then by adding the adjusted DAS of the buying boat. This new total DAS will be the baseline for all future percentage allocations of DAS. (5) DAS trades are allowed among dredge vessels. (6) DAS trades are allowed among net vessels. (7) Dredge vessels are allowed to buy DAS from net vessels. (8) Net vessels are not allowed to buy DAS from dredge vessels. (9) The number of DAS owned by an individual or an individual business entity may be restricted to, from 1 percent to 5 percent of the total fleet DAS. (10) Full-time vessels selling part of their DAS may sell down to the part-time level at that time and keep their limited access scallop permits. However, below the part-time level they will be required to relinquish their limited access scallop permits. These vessels may be used as replacement vessels, however, in the scallop and other regulated fisheries. (11) Part-time and occasional vessels may sell any and all of their DAS without relinquishing any scallop permits.

## Closed Area Alternatives

The types of measures the Council can currently implement or modify as framework adjustments to manage scallops are: DAS changes, shell height restrictions, off-loading windows (time periods during which scallops may be landed), effort monitoring, data reporting, trip limits, gear restrictions, permitting restrictions, crew limits, small mesh line, onboard observers, and any other measure currently included in the FMP.

## Public Hearings

The dates, times, and locations of the hearings are scheduled as follows:

1. October 24, 1997, 1 p.m.--Holiday Inn, U.S. Route 1 and 3, Ellsworth, ME, telephone: 207–667–9341;

2. October 27, 1997, 6:30 p.m.--Department of Environmental and Natural Resources, 943 Washington Square Mall, Washington, NC, telephone: 919–946–6481;

3. October 30, 1997, 1 p.m.--Holiday Inn, 3900 and Atlantic, 39th Street, Virginia Beach, VA, telephone: 757–428–1711;

4. October 31, 1997, 1 p.m.--Grand Hotel, 1045 Beach Drive, Cape May, NJ, telephone: 609–884–5611;

5. November 3, 1997, 1 p.m.--Seaport Inn, 110 Middle Street, Fairhaven, MA, telephone: 508–997–1281.

**Special Accommodations**

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be addressed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: October 8, 1997.

**Bruce C. Morehead,**

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

[FR Doc. 97–27297 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–22–F

# Notices

**Federal Register**

Vol. 62, No. 199

Wednesday, October 15, 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.

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Notice of Meeting

**SUMMARY:** Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, October 24, 1997. The meeting will be held in Room M09 at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC, beginning at 9:00 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the national Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Chairman's Report
III. Report of the Task Force on Regulations—Adoption of Proposed Regulation
IV. Annual Council Meeting Plan—Discussion and Adoption
V. Preservation Policy Issues
VI. Report on Expanding the Council's Resource Base—Discussion and Adoption of Principles
VII. Executive Director's Report
VIII. New Business
IX. Adjourn

**Note:** The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: October 9, 1997.

**John M. Fowler,**

*Executive Director.*

[FR Doc. 97–27234 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–10–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:30 p.m. on Wednesday, October 29, 1997, at the Equal Employment Opportunity Commission Regional Office, Conference Room, 7 World Trade Center, New York, New York 10048. The purpose of the meeting is to plan future events and discuss progress of the Committee report on section 8 housing programs. The Committee will also hold a 4-hour briefing, starting at 1:00 p.m., on police-community relations in New York City by representatives from law enforcement, city government, community groups, and civil rights organizations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson L. D. Taracido, 212–645–8999, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 3, 1997.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 97–27249 Filed 10–14–97; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

*Title:* Transportation Annual Survey.

*Form Number(s):* B–514, –515, –524, –525, –530, –531, –532, –533, –900–L1, –900–L2, –900–L3, –900–L4.

*Agency Approval Number:* 0607–0798.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 10,908 hours.

*Number of Respondents:* 4,000.

*Avg Hours Per Response:* 2.73 hours.

*Needs and Uses:* The Census Bureau originally obtained approval for the Transportation Annual Survey (TAS) in 1994 which replaced and expanded upon the existing Motor Freight Transportation and Warehousing Survey (WATS) that covered the trucking and public warehousing industries. The new TAS also included transportation by waterway and segments of the busing industry, specifically intercity and rural bus transportation, bus charter service, and terminal and service facilities. In addition, it introduced new data items to the trucking forms which have enabled us to publish total miles traveled, percentage of miles traveled with loaded or empty vehicles, weight of shipments, and revenue from transborder shipments. Due to funding issues, we have not yet implemented the busing and waterway transportation portion of the TAS. This request for extension, again includes these two industries and collection of these data is, again contingent upon funding.

*Affected Public:* Businesses or other for-profit organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 USC, Sections 131, 182, 224, and 225.

*OMB Desk Officer:* Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 8, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–27229 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–301–602]**

### Certain Fresh Cut Flowers From Colombia: Extension of Time Limit of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results in the administrative review of the antidumping order on certain fresh cut flowers from Colombia, covering the period March 1, 1996, through February 28, 1997, since it is not practicable to complete the review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675 (a)(3)(A).

**EFFECTIVE DATE:** October 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Marian Wells or Rosa Jeong, Import Administration, U.S. Department of Commerce, Room 3099, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6309 or 482–1278, 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 (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR part 353 (April 1997).

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 15, 1997, the Department initiated an administrative review of the antidumping duty order on Fresh Cut Flowers from Colombia (Flowers), covering the period March 1, 1996, through February 28, 1997 (62 FR 18312). In our notice of initiation, we stated that we intended to issue the final results of this review no later than March 31, 1998.

#### Postponement of the Preliminary Results

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) allows the Department to extend this time period to 365 days.

We determine that it is not practicable to issue the preliminary results within 245 days because of the large number of respondents and the complexity of the legal and methodological issues in this review.

Accordingly, the deadline for issuing the preliminary results of this review is now no later than January 26, 1998. The deadline for issuing the final results of this review will be 120 days from the publication of the preliminary results.

This extension is in accordance with section 751 (a)(3)(A) of the Act.

Dated: October 8, 1997.

**Richard W. Moreland,**

*Acting Deputy Assistant Secretary AD/CVD Enforcement.*

[FR Doc. 97–27293 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–301–602]**

### Certain Fresh Cut Flowers From Colombia: Initiation of a Changed Circumstances Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is initiating a changed circumstance review to determine whether Flores El Talle Ltda. is covered under the revocation granted to the Flores Colombianas Group.

**EFFECTIVE DATE:** October 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Yeske or Beth Graham, 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 482-4105, respectively.

#### Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act). 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 Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are those codified at 19 CFR Part 353 (April 1997).

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 18, 1987, the Department published in the **Federal Register** (52 FR 8492) an antidumping duty order on certain fresh cut flowers from Colombia. On March 31, 1994, the antidumping order was revoked in the fourth administrative review as it applied to the Flores Colombianas Group. In a letter dated August 23, 1996, Flores El Talle Ltda. (Flores El Talle) notified the Department that the company shares the same ownership and management with the other Flores Colombianas Group companies, and that Flores El Talle should receive the same antidumping duty treatment that is accorded the Flores Colombianas Group.

#### Initiation of Review

The Department is initiating this review to determine whether Flores El Talle is a member of the Flores Colombianas Group and, if so, whether the revocation applicable to the Flores Colombianas Group also applies to Flores El Talle. If we determine that the revocation is applicable to Flores El Talle, we will instruct U.S. Customs officials to liquidate all entries of Colombian fresh flowers from Flores El Talle without regard to antidumping duties.

We are hereby notifying the public that we are initiating a changed

circumstances antidumping duty administrative review on certain fresh cut flowers from Colombia. We are also inviting interested parties to comment on the above and on any other relevant issue(s) associated with the foregoing.

This notice is published in accordance with section 751(b) of the Act and section 353.22(f)(1)(i) of the Department regulations.

Dated: October 7, 1997.

**Robert S. LaRussa,**

*Assistant Secretary, Import Administration.*

[FR Doc. 97–27294 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 97–086. *Applicant:* University of Texas at Austin, Bellmont 222, Austin, TX 78712. *Instrument:* 3–D Motion Analysis System, Model Vicon 140. *Manufacturer:* Oxford Metrics, Ltd., United Kingdom. *Intended Use:* The instrument will be used to record and quantify an individual's movement performance during a series of experiments on the stability of standing balance, control of standing balance during threats to balance and the stability and variability of kinematic and kinetic variables during walking. These kinds of experiments are done with infants and young children, young adults and older adults. In addition, the instrument will be used for educational purposes in the courses KIN 388 Motor Control Laboratory Techniques and KIN 382 Motor Development Assessment in which students will learn the technical skills necessary to collect their own data and perform subsequent processing and data interpretation. *Application accepted by Commissioner of Customs:* September 19, 1997.

*Docket Number:* 97–087. *Applicant:* Research Foundation of CUNY, 79 Fifth Avenue, New York, NY 10003. *Instrument:* Stopped-Flow Rapid Kinetics Accessory, Model SFA–20. *Manufacturer:* Hi-Tech Scientific, United Kingdom. Intended Use: The instrument is an accessory used as a complement to existing instrumentation, i.e. temperature-jump, spectrophotometers and fluorimeters. The phenomena to be investigated are rapid substitution reactions of trigonal boron acids. Studies will then be extended to complexation reactions of a variety of bidentate chelating ligands. *Application accepted by Commissioner of Customs:* September 22, 1997.

**Frank W. Creel**

*Director, Statutory Import Programs Staff.*

[FR Doc. 97–27295 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Malcolm Baldrige National Quality Award's Board of Overseers

**AGENCY:** National Institute of Standards and Technology, DOC.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Friday, November 7, 1997, from 8:30 a.m. to 3:30 p.m. The Board of Overseers consists of nine members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of the meeting on November 7, 1997, will be for the Board of Overseers to receive and then discuss reports from the National Institute of Standards and Technology with the chairman of the Judges Panel of the Malcolm Baldrige National Quality Award. These reports will cover the following topics: Overview of the 1997 award cycle; discussion of applicant related proposals and program status, issues and plans; develop recommendations and report same to the Director of the National Institute of Standards and Technology.

**DATES:** The meeting will convene November 7, 1997 at 8:30 a.m., and adjourn at 3:30 p.m. on November 7, 1997.

**ADDRESSES:** The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: October 7, 1997.

**Elaine Bunten-Mines,**

*Director, Program Office.*

[FR Doc. 97–27149 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–3–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 100697A]**

### Mid-Atlantic Fishery Management Council; Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Mid-Atlantic Fishery Management Council and its Information & Education Committee, Comprehensive Management Committee, Surfclam & Ocean Quahog Committee, Habitat Committee, Large Pelagics Committee, and Executive Committee will hold a public meeting.

**DATES:** The meetings will be held on October 28–30, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Holiday Inn SunSpree, 39th Street & Atlantic Ocean, Virginia Beach, VA 23351; telephone: 757–428–1711.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

**FOR FURTHER INFORMATION CONTACT:** David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

**SUPPLEMENTARY INFORMATION:** On Tuesday, October 28, 1997, the Information & Education Committee will meet from 8:00–10:00 a.m. The Comprehensive Management Committee will meet from 10:00 a.m. to noon. The Committee Chairmen will meet from

noon to 1:30 p.m. The Surfclam & Ocean Quahog Committee will meet from 1:30–2:30 p.m. The Habitat Committee will meet from 2:30–4:30 p.m. The Executive Committee will meet from 4:30–6:30 p.m. On Wednesday, October 29, 1997, the Large Pelagics Committee will meet from 8:00–10:00 a.m. There will be a meeting on bluefish from 10:00 a.m. until noon which will consist of individuals involved in the development of Amendment 1 to the Bluefish Fishery Management Plan (FMP). The full Council will meet from 1:00–4:00 p.m. The Council will go into closed executive session from 4:00–5:00 p.m. to discuss employment and related matters. At 7:00 p.m., there will be a Dogfish FMP Scoping Meeting. On Thursday, October 30, 1997, the full Council will meet from 8:00 a.m. until approximately noon.

The purpose of these meetings is to discuss the formation of a newsletter, scup discards in the Loligo fishery and possible solutions, review and possible adoption of Amendment 10 to the Surfclam & Ocean Quahog FMP (Maine ocean quahog fishery), essential fish habitat, tuna allocations, and other fishery management matters.

The above agenda items may not be taken in the order in which they appear and are subject to change as necessary; other items may be added. This meeting may also be closed at any time to discuss employment or other internal administrative matters.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

### Special Accommodations

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

Dated: October 8, 1997.

**Bruce C. Morehead,**

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

[FR Doc. 97–27262 Filed 10–9–97; 4:24 pm]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 100897C]**

## Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

**DATES:** The Council and its advisory entities will meet during the week of November 3–7, 1997. See **SUPPLEMENTARY INFORMATION** for meeting dates and times.

**ADDRESSES:** The meetings will be held at the Airport Sheraton Hotel, 8235 NE Airport Way, Portland, OR 97220; telephone: (503) 281–2500.

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

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

**SUPPLEMENTARY INFORMATION:** The Council meeting will begin on Tuesday, November 4, at 8 a.m. with an open session. It will reconvene on Wednesday and Thursday at 8 a.m. in open session, and will reconvene on Friday at 8:30 a.m. in open session. On Friday, November 7, the Council will meet in closed session (closed to public) from 8 a.m. to 8:30 a.m. to discuss litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

### Council Agenda Items

A. Call to Order
1. Opening Remarks, Introductions, Roll Call
2. Approve Agenda
3. Approve Minutes of September 1997 Meeting
B. Groundfish Management
1. Status of Federal Regulations
2. Report on Voluntary Observer Program
3. Final Harvest Levels and Other Specifications for 1998
4. Fixed Gear Sablefish Management for 1998 (Limited Entry and Open Access)
5. Initial Review of Draft Plan Amendments
6. Status of Fisheries in 1997 and Inseason Adjustments
7. Management Measures for 1998
8. Capacity Reduction Program
9. Review of Stock Assessment Process
10. Exempted Fishing Permits for Whiting, Enhanced Data Collection Project, and New Research
11. Groundfish Management Team, Staff, and NMFS Work Load
C. Salmon Management
1. Sequence of Events and Status of Fisheries in 1997
2. Plan Amendment to Revise Oregon Coastal Natural (OCN) Coho Management Goals
3. Initial Review of 1999 Plan Amendments
4. Consideration of Revisions to Methodologies
5. Consideration of Revisions to California Recreational Gear Restrictions
6. Consideration of Revisions to Allocation of Snake River Fall Chinook Impacts
7. Oral Updates on Activities to Restore Natural Stocks
D. Habitat Issues - Report of the Habitat Steering Group
E. Pacific Halibut Management
1. Summary of 1997 Fisheries
2. Revisions to the Catch Sharing Plan and Recreational Fishery Regulations for 1998
F. Coastal Pelagic Species Management
1. Initial Review of Plan Amendments Including Limited Access Options and Control Date
G. Highly Migratory Species Management Issues - Report of the Policy Committee
H. Administrative and Other Matters
1. Report of the Budget Committee
2. Status of Legislation
3. Appointments to Advisory Entities
4. March 1998 Agenda

### Schedule of Advisory Group/Committee Meetings

The Groundfish Management Team (GMT) convenes on Sunday, November 2, 1997, at 3 p.m. and continues meeting as necessary November 3–7 to address groundfish issues on the Council agenda. The GMT will meet jointly with the Groundfish Advisory Subpanel as necessary during the week.

The Buyback Committee meets Monday, November 3, 1997, from 8 a.m. to 10 a.m. to develop a proposal for a groundfish vessel capacity reduction program.

The Scientific and Statistical Committee (SSC) meets Monday, November 3, 1997, at 8 a.m. and reconvenes at 8 a.m. on Tuesday, November 4, 1997, to address scientific issues on the Council agenda.

The Groundfish Advisory Subpanel (GAP) begins meeting at 10 a.m. on Monday, November 3, 1997, and continues meeting as necessary through Thursday, November 6, 1997, to address groundfish issues on the Council agenda. The GAP will meet jointly with the GMT as necessary during the week.

The Habitat Steering Group meets at 10 a.m. on Monday, November 3, 1997, to address issues and actions affecting habitat of fish species managed by the Council.

The Salmon Advisory Subpanel (SAS) meets at 10 a.m. on Monday, November 3, 1997, and reconvenes at 8 a.m. on Tuesday, November 4, 1997, to consider salmon issues on the Council agenda.

The Salmon Technical Team (STT) meets at 11 a.m. on Monday, November 3, 1997, to address salmon issues on the Council agenda. The STT will meet jointly with the SAS as necessary.

The SSC, GMT, and GAP meet jointly at 7 p.m. on Monday, November 3, 1997, to critique the new groundfish stock assessment process implemented in 1997.

The Enforcement Consultants meet at 7 p.m. on Tuesday, November 4, 1997, to address enforcement issues relating to Council agenda items.

The Highly Migratory Species Policy Committee will meet on Wednesday, November 5, 1997, as soon as the Council adjourns for the day, to discuss the role of the Pacific Council in data collection and management of Pacific highly migratory species, the need for an industry advisory group and to recommend a delegate to represent the Council at international meetings.

The Budget Committee meets on Thursday, November 6, 1997, as soon as the Council adjourns for the day, to review the 1997 financial report, develop a budget request for 1998, and consider meeting schedule and sites for future Council meetings.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: October 8, 1997.

**Bruce C. Morehead,**

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

[FR Doc. 97–27263 Filed 10–14–97; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 100397B]**

### Endangered Species; Permits

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

**ACTION:** Receipt of applications for modifications to incidental take permits 901 and 902.

**SUMMARY:** Notice is hereby given that the Washington Department of Fish and Wildlife at Olympia, WA (WDFW) has applied in due form for modifications to permits that would provide authorization for incidental takes of an endangered anadromous fish species.

**DATES:** Written comments or requests for a public hearing on either of these applications must be received on or before November 14, 1997.

**ADDRESSES:** The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Protected Resources Division in Portland, OR.

**SUPPLEMENTARY INFORMATION:** WDFW requests modifications to permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Permits 901 and 902 authorize WDFW incidental takes of endangered Snake River sockeye salmon (*Oncorhynchus nerka*); threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); and threatened Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with numerous non-listed fish hatchery complexes and educational projects throughout the state of WA. These artificial propagation projects may result in incidental takes of ESA-listed species from ecological and/or genetic interactions and from hatchery operations. Impacts on ESA-listed juvenile fish may include competition for food and habitat, disease transmission, predation by non-listed hatchery fish, and an increased vulnerability to predation by other predators. Non-listed, hatchery-produced fish may also impact the ESA-listed species through interbreeding, which could result in a loss of genetic variability in the ESA-listed fish populations.

The modifications of permits 901 and 902 are required to authorize the incidental takes of endangered upper Columbia River steelhead trout (*Oncorhynchus mykiss*) and threatened Snake River steelhead trout (*Oncorhynchus mykiss*) associated with: 1) the operation of non-listed fish hatchery facilities and educational programs in the Columbia River Basin, 2) the on-station releases or transfers of non-listed fish produced from those facilities, and 3) the operation of tributary smolt traps in the Columbia River Basin for non-listed fish hatchery program research and evaluation purposes. WDFW has submitted revised conservation plans in the permit modification applications that specify steps proposed to be taken to monitor, minimize, and mitigate impacts to ESA-listed fish. In the permit modification applications, WDFW included descriptions of incidental takes of lower Columbia River steelhead trout (*Oncorhynchus mykiss*) in anticipation of a possible listing determination of this Evolutionarily Significant Unit by NMFS in 1998. The modifications to permits 901 and 902 are requested to be valid for the duration of the permits. Permits 901 and 902 both expire on December 31, 1998.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on either of these applications would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: October 7, 1997.

**Nancy Chu,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–27162 Filed 10–14–97; 8:45 am]

**BILLING CODE 3510–22–F**

## COMMODITY FUTURES TRADING COMMISSION

### Public Information Collection Requirement

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of intent to renew Information Collection #3038–0047—Contract Market Transactions.

**SUMMARY:** The Commodity Futures Trading Commission is planning to renew Information Collection 3038–0047, Contract Market Transactions, which is due to expire on January 31, 1998. On October 2, 1995, pursuant to Section 4(c) of the Commodity Exchange Act (''Act''), 7 U.S.C. § 6(c) (1994), the Commission published final rules in the **Federal Register** which exempted certain contract market transactions from specified requirements of the Act and Commission regulations thereunder (60 FR 51323). The information collected purusant to this rule is required in order to assist the Commission in its determination that the exempted transaction will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act, and that the exemption would be consistent with the public interest and the purposes of the Act. In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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

**ADDRESSES:** Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

*Title:* Contract Market Transactions.

*Control Number:* 3038–0047.

*Action:* Extension.

*Respondents:* Contract Markets.

*Estimated Annual Burden:* 5,033.

| Respondents | Regulation (17 CFR) | Estimated No. of respondents | Annual responses | Est. avg. hours per response. |
|---|---|---|---|---|
| Contract | 36.5 | 100 | 100 | 0.33 |
| Markets | 36.7 | 200 | 2,000 | 2.50 |

Issued in Wasington, D.C. on October 9, 1997.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–27243 Filed 10–14–97; 8:45 am]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Policy Board Advisory Committee; Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Policy Board Advisory Committee will meet in closed session from 9 am until 4 pm, October 29, 1997 and from 9 am until 4 pm, October 30, 1997 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982), it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: October 8, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 97–27157 Filed 10–14–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Federal Advisory Committee on Gender-Integrated Training and Related Issues; Meeting

**ACTION:** Notice.

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Federal Advisory Committee on Gender-Integrated Training and Related Issues is scheduled to be held from 9 a.m. to 4:30 p.m. on October 23, 1997 and from 9:00 a.m. to 12:00 p.m. on October 24, 1997. The meeting will be held in the conference room at 801 Pennsylvania Avenue, NW., Suite 301, Washington, DC 20004. The purpose of the meeting is for the full committee to: (1) Discuss their findings and observations from their various visits to Service initial entry training sites and operational units, and (2) discuss preparation of the final report. Persons desiring to make oral presentations or submit written statements for consideration for the Committee must contact Lieutenant Colonel Brad Loo at Committee Headquarters, telephone (202) 761–4489, no later than October 21, 1997.

Dated: October 7, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–27155 Filed 10–14–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Defense Technology Base of the 21st Century; meeting

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Defense Technology Base

of the 21st Century will meet in closed session on October 29–30, 1997 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address the issues involved in assuring that the U.S. has adequate/appropriate technology base from which to develop sustained military superiority for the 21st century; such a base includes technology developed by DoD, but also access to technology developed elsewhere as well as an assured stream of scientists and engineers that will develop technology and build military materiel. Many internal and external changes influence DoDs options.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: October 8, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–27156 Filed 10–14–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Notice to amend record systems.

**SUMMARY:** The Department of the Air Force proposes to amend four systems of records notices in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective without further notice on November 14, 1997, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne Rollins at (703) 697–8674 or DSN 227–8674.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the records systems being amended are set forth below followed by the notices as amended, published in their entirety.

Dated: October 8, 1997.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F036 USAFA C**

**SYSTEM NAME:**

Prospective Instructor Files *(June 11, 1997, 62 FR 31793).*

**CHANGES:**

* * * * *

**SYSTEM NAME:**

Change system name to 'Prospective Instructor Files (Officer, Enlisted Special Duty)'.

* * * * *

**STORAGE:**

Delete entry and replace with 'Maintained in file folders, in computers data bases, and on computer output products.'

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020;

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.'

* * * * *

**F036 USAFA C**

**SYSTEM NAME:**

Prospective Instructor Files (Officer, Enlisted Special Duty).

**SYSTEM LOCATION:**

Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020;

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military personnel applying for instructor duty at the Air Force Academy.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Copy of Application for Instructor Duty; college transcripts; past Officer Effectiveness Reports; Officer Uniform Assignment Brief which may contain prior assignment information, aeronautical rating information, general personnel data including security clearance, date of birth, marital status, and promotion dates; correspondence between individual and department; evaluations on individual's suitability, and record of personal interview.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force and 10 U.S.C., Chapter 903, U.S. Air Force Academy.

**PURPOSE(S):**

Used to determine qualification, availability and location of potential instructors.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in file folders, in computers data bases, and on computer output products.

**RETRIEVABILITY:**

Retrieved by name.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

**RETENTION AND DISPOSAL:**

Retained in office files until superseded, obsolete, or no longer needed for reference. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020;

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020; or the

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200; or the

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address written requests to or visit the Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020; or the

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200; or the

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from the individual, previous employers, educational institutions and source documents such as reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F036 USAFA D**

**SYSTEM NAME:**

Class Committee Products *(June 11, 1997, 62 FR 31793).*

**CHANGES:**

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'List of cadets academically deficient at progress reports; provides grades, instructor comment cards, military order of merit and other military and entrance data on cadets meeting committees; reports committee decisions and includes worksheets with coded recommendations to the Academy Board at the end of the semester.'

* * * * *

**STORAGE:**

Delete entry and replace with 'Maintained in visible file binders/ cabinets, electronically in the Cadet Administrative Management Information System (CAMIS) data base and on computer output products.'

* * * * *

**F036 USAFA D**

**SYSTEM NAME:**

Class Committee Products.

**SYSTEM LOCATION:**

U.S. Air Force Academy, CO 80840–5000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force Academy cadets.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

List of cadets academically deficient at progress reports; grades, instructor comment cards, military order of merit and other military and entrance data on cadets meeting committees; reports committee decisions and includes worksheets with coded recommendations to the Academy Board at the end of the semester.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force and 10 U.S.C., Chapter 903, U.S. Air Force Academy.

**PURPOSE(S):**

Provides data on academically deficient cadets to Academic Review Committee who makes recommendations concerning cadets' future to the Academy Board.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in visible file binders/ cabinets, electronically in the Cadet Administrative Management Information System (CAMIS) data base and on computer output products.

**RETRIEVABILITY:**

Retrieved by name.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software.

**RETENTION AND DISPOSAL:**

Destroyed one year after graduation or when purpose has been served, whichever is sooner. Destruction is by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS:**

Dean of Faculty, U.S. Air Force Academy, CO 80840–5000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Dean of Faculty, U.S. Air Force Academy, CO 80840–5000.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address written requests to or visit the Dean of Faculty, U.S. Air Force Academy, CO 80840–5000.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Records are compiled from cadet grading and rating cycles.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F036 USAFA F**

**SYSTEM NAME:**

Military Performance Average *(June 11, 1997, 62 FR 31793).*

**CHANGES:**

**SYSTEM LOCATION:**

Delete entry and replace with 'Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.'

* * * * *

**STORAGE:**

Delete entry and replace with 'Maintained in paper form, in computer C-3 data base, and computer and computer output products.'

* * * * *

**F036 USAFA F**

**SYSTEM NAME:**

Military Performance Average.

**SYSTEM LOCATION:**

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force Academy cadets.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Rating forms used to compute Military Performance Average (MPA).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. Chapter 903, U.S. Air Force Academy; and E.O. 9397 (SSN).

**PURPOSE(S):**

To determine the semester and cumulative MPA for U.S. Air Force Academy Cadets as an input to the overall performance average. Identifies cadets for the Commandant's List and deficient cadets to be placed on aptitude probation, and consideration for disenrollment from the U.S. Air Force Academy.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Military performance information is released to the nominating official upon request in order to evaluate nominating procedures.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in paper form, in computer C-3 data base, and computer and computer output products.

**RETRIEVABILITY:**

Retrieved by name, Cadet Number, and Social Security Number.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms and on computer storage devices protected by computer system software.

**RETENTION AND DISPOSAL:**

All MPA forms prepared by coaches, Officers in Charge (OICs), academic instructors and Air Officers Commanding (AOCs) are destroyed one year after close of rating cycle. MPA forms prepared by cadets are transferred to the Cadet Personnel Record where they are destroyed 90 days after graduation.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information is obtained from coaches, OICs of cadet intercollegiate and extracurricular clubs and teams, academic instructors, AOCs, and the cadet chain of command.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F036 USAFA G**

**SYSTEM NAME:**

Instructor Academic Records *(June 11, 1997, 62 FR 31793).*

**CHANGES:**

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**SYSTEM LOCATION:**

Delete entry and replace with 'Dean of Faculty, Headquarters, U.S. Air Force Academy, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.'

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.'

* * * * *

**F036 USAFA G**

**SYSTEM NAME:**

Instructor Academic Records.

**SYSTEM LOCATION:**

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force Academy cadets and graduates.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

(1) Cadet information card.

(2) Listings of all cadet academic schedules including final examination schedules; rosters of cadets, by course, taking final examinations; extra instruction or hospital instruction

schedules; rosters of cadets requesting permission to enroll in independent study, or authorized to drop or add course; listings of course rosters prepared for current semester showing individual's enrollment by course section; reports of reasons for cadet absences or lateness for academic causes; listings of cadets improperly registered in classes.

(3) Themes, research papers, graded recitations, grade reviews, other graded work, laboratory reports, case studies, final and midterm examinations, turnout examinations, validation examinations, and graded reviews of courses in which no final examination is given.

(4) Copies of academic schedules and grades, requests for academic waivers, documentation of academic difficulty, plans outlining courses that must be taken in order to graduate.

(5) Graduate record examination scores, orders of merit scores, cumulative GPA scores, and panel commentaries.

(6) Various cadet grade reports, cards and sheets used in auditing and distributing academic grades.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. Chapter 903, U.S. Air Force Academy; and E.O. 9397 (SSN).

**PURPOSE(S):**

(1) Individual cards on cadets listing name, date of birth, Social Security Number, admission examination scores, course grades and instructor evaluations concerning aptitude, attitude, and performance are used by instructor to evaluate potential cadets for commissioned service and to evaluate potential cadets as future instructors.

(2) Provides both cadets and instructors the schedules of classes and classrooms and an explanation for any deviation from these schedules and is used by the cadets and instructors to provide locator and scheduling information and to provide course offering information, to change current and future semester course enrollments, to reschedule cadets and establish criteria for resectioning cadets in their courses during the academic year.

(3) Used in assigning grade scores to monitor progress of cadets throughout the academic year and to determine grades.

(4) Used for counseling cadets on academic performance by the counselors and advisors. Assists the cadet in planning an academic program that will satisfy graduation requirements.

(5) Used in the applications of graduates competing for the various fellowships and other post-graduate scholarships by Graduate Scholarship Committee.

(6) Used in auditing and distributing academic grades and are compiled to determine a letter grade for each student in each course.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Stored in card files, on computer magnetic tapes and printouts, and in file folders/notebooks/binders/visible files.

**RETRIEVABILITY:**

By name or Social Security Number of cadet.

**SAFEGUARDS:**

Records are accessed by authorized person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked safes, file containers, cabinets or rooms and on computer storage devices protected by computer system software.

**RETENTION AND DISPOSAL:**

(1) Destroy after purpose has been served or 10 years after graduation, whichever is sooner.

(2) Destroy at end of academic year or upon completed action, whichever is sooner.

(3) Destroy 3 months after end of the semester in which administered or at the discretion of the course director, return to the cadet for retention as reference and study materials.

(4) Same as (2) above.

(5) Destroy when no longer needed.

(6) Destroy when superseded or when purpose has been served, whichever is sooner.

**SYSTEM MANAGER(S) AND ADDRESS:**

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from source documents such as reports prepared on behalf of the AF by boards, committees, panels, auditors, and educational institutions, individual, instructors, automated system interfaces from course requisites.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 97–27153 Filed 10–14–97; 8:45 am]

**BILLING CODE 5000–04–F**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Environmental Impact Statement (EIS) for Fort Greely Maneuver Area and Air Drop Zone, and Fort Wainwright Maneuver Area

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The Military Lands Withdrawal Act, Public Law 99–606, enacted by Congress on November 6,

1986, identified For Greely Maneuver Area, Fort Greely Air Drop Zone, and Fort Wainwright Maneuver Area (also known as the Yukon Maneuver Area) as lands withdrawn from public use until November 6, 2001. The Act requires the Army to publish a Draft EIS for continued or renewed withdrawal of these lands by November 6, 1998. The Department of the Army will be directing the preparation of the EIS for the renewed withdrawal of the Fort Greely Maneuver Area and Air Drop Zone, and Fort Wainwright Maneuver Area. Both sites are located near Fairbanks in interior Alaska. In preparing the Draft EIS, the Army and the Bureau of Land Management (BLM) have mutually agreed to use the legislative environmental impact statement (LEIS) process pursuant to 40 C.F.R. 15061.8 to comply with the requirements of Public Law 99–606. This LEIS will be prepared in cooperation with BLM and will be completed by November 6, 1998, in accordance with Public Law 99–606. Therefore, pursuant to the LEIS process, a Final LEIS (FLEIS) will be prepared and a Notice of Availability of the FLEIS will be published in the **Federal Register**; however, there will not be a Record of Decision.

*Scoping:* Federal, state, local agencies and the public are invited to participate in the scoping process for the completion of the renewed withdrawal of Fort Greely Maneuver Area and Air Drop Zone, and Fort Wainright Maneuver Area. The scoping process will identify the significant issues of the proposed renewed withdrawals which will need to be addressed in the LEIS. Scoping meetings will be held in Anchorage, Fairbanks, and Delta Junction, Alaska, within 60 days of the publication of the Notice of Intent in the **Federal Register**. Notification of the times and locations for the public scoping meetings will be published in local newspapers.

*Comments:* Written comments identifying issues and concerns to be addressed in the LEIS will be accepted within 60 days of the public scoping meetings. Written comments may be forwarded to: Directorate of Pubic Works, *Attn:* APVR–RPW–EV (Mr. Steve Wilson), 730 Quartermaster Drive, Fort Richardson, AK 99505–6500.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Wilson, Public Works Division, Fort Richardson, at (907) 384–2710/Fax (907) 384–3047.

**SUPPLEMENTARY INFORMATION:** The Fort Greely Maneuver Area and Air Drop Zone comprise approximately 623,585 acres near Delta Junction, Alaska.

The Fort Wainwright Maneuver Area comprises approximately 247,952 acres near Fairbanks, Alaska. Both sites were withdrawn from public use from the BLM for military purposes with the enactment of Public Law 99–606 on November 6, 1986. The Act specifies these lands are reserved for use by the Secretary of the Army for military maneuvering, training, artillery firing, aerial gunnery, infantry tactics, equipment development and testing, as well as other defense related purposes. Both sites are used to train in an extremely cold environment and to test the effect of this environment on military equipment. The Fort Greely Maneuver Area and Air Drop Zone, and the Fort Wainwright Maneuver Area are used by the Army, Air Force, and other military units. The Army and BLM jointly manage the natural resources on both sites recognizing the primary military role of these withdrawal lands.

The Department of the Army has determined there is a continuing military requirement for the use of these withdrawal lands to train and maintain military units at the required state of readiness. With the completion of the LEIS, the Army proposes to renew its withdrawal from public use the Fort Greely Maneuver Area and Air Drop Zone, and the Fort Wainwright Maneuver Area. Reasonable and feasible alternatives will be developed as part of the EIS process.

Preliminary planning criteria which have been identified for the completion of the LEIS for both sites include: non-military activities on the withdrawal lands; valid existing rights on the withdrawal lands; consistency with existing plans of adjacent land owners and local governments; natural resource management of the withdrawal lands; public access to portions of the withdrawal lands; and subsistence use of the withdrawal lands. The LEIS will be completed utilizing existing data, information, plans, land use analyses and previously completed EIS's and Environmental Assessments for these withdrawal lands.

Dated: October 9, 1997.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I,L&E).*

[FR Doc. 97–27284 Filed 10–14–97; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Logistics Agency, DOD.

**ACTION:** Notice to delete and amend records systems.

**SUMMARY:** The Defense Logistics Agency proposes to delete two systems of records notices, and amend one system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The records in the systems of records being deleted are being consolidated into an existing system of records. The Defense Logistics Agency is currently using a DoD recommended computer software package to track and monitor access to DLA computer databases and DLA managed installations and activities.

**DATES:** The amendment and deletions will be effective on November 14, 1997.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Salus at (703) 767–6183.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered systems report.

The Defense Logistics Agency proposes to delete two systems of records notices, and amend one system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The records in the systems of records being deleted are being consolidated into an existing system of records. The Defense Logistics Agency is currently using a DoD recommended computer software package to track and monitor access to DLA computer databases and DLA managed installations and activities.

Dated: October 8, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DELETIONS**
**S161.30 DLA-I**

**SYSTEM NAME:**

Motor Vehicle Registration Files *(February 22, 1993, 58 FR 10857).*

Reason: Records have been consolidated into the existing DLA system of records S500.50 CA, entitled Access and Badging Records.

**S500.30 DLA-I**

**SYSTEM NAME:**

Visitors and Temporary Passes File *(February 22, 1993, 58 FR 10898).*

Reason: Records have been consolidated into the existing DLA system of records S500.50 CA, entitled Access and Badging Records.

**AMENDMENT**
**S500.50 DLA-I**

**SYSTEM NAME:**

Individual Access Records *(February 22, 1993, 58 FR 10899).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'S500.50 CA.'

**SYSTEM NAME:**

Delete entry and replace with 'Access and Badging Records.'

**SYSTEM LOCATION:**

Delete entry and replace with 'Staff Director, Office of Command Security, Headquarters Defense Logistics Agency, ATTN: CAAS, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with 'DLA civilian and military personnel, contractor employees, and individuals requiring access to DLA-controlled installations, facilities, and/or computer systems.'

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'System contains documents relating to requests for and issuance of facility entry badges and passes, motor vehicle registration, and access to DLA computer systems or databases. The records contain the individual's name; address; Social Security Number; date of birth; a DLA-assigned bar code number; dates and times of building entry; current photograph; physical descriptors such as height, hair color, and eye color; computer logon addresses, passwords, and user identification codes; security clearance data; personal vehicle description to include year, make, model, and vehicle identification number; state tag data; operator's permit data; inspection and insurance data; vehicle decal number; parking lot assignment; and parking infractions.'

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete and replace with '5 U.S.C., Chapter 3, Powers; 5 U.S.C. 6101, Time clocks; 5 U.S.C. 6125, Hours of work; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 18 U.S.C. 1030, Computer fraud; 18 U.S.C. 1029, Access device fraud; 23 U.S.C. 401 et seq., National Highway Safety Act of 1966; E.O. 10540 (Security Requirements); and E.O. 9397 (SSN).'

**PURPOSE(S):**

Delete entry and replace with 'Information is maintained by DLA security personnel to control access onto DLA-managed installations and activities; access into DLA-controlled buildings and facilities, and access to DLA computer systems or databases.'

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with 'Retrieved by name, Social Security Number, bar code number, or decal number.'

**SAFEGUARDS:**

Delete entry and replace with 'Records are maintained in secure, limited access, or monitored work areas accessible only to authorized DLA personnel.'

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Vehicle registration records are destroyed when superseded or upon normal expiration or 3 years after revocation;

Individual badging and pass records are destroyed upon cancellation or expiration or 5 years after final action to bar from facility.

Database access records are maintained for the life of the employee and destroyed 1 year after employee departs.

Visitor and temporary passes, permits, and registrations are destroyed 2 years after final entry or 2 years after date of document, as appropriate.'

* * * * *

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with 'Information is supplied by security personnel and by individuals applying for access to DLA controlled installations, facilities, or databases.'

* * * * *

**S500.50 CA**

**SYSTEM NAME:**

Access and Badging Records.

**SYSTEM LOCATION:**

Staff Director, Office of Command Security, HQ Defense Logistics Agency, ATTN: CAAS, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Defense Logistics Agency (DLA) civilian and military personnel, contractor employees, and individuals requiring access to DLA-controlled installations, facilities, or computer systems.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

System contains documents relating to requests for and issuance of facility entry badges and passes, motor vehicle registration, and access to DLA computer systems or databases. The records contain the individual's name; address; Social Security Number; date of birth; a DLA-assigned bar code number; dates and times of building entry; current photograph; physical descriptors such as height, hair color, and eye color; computer logon addresses, passwords, and user identification codes; security clearance data; personal vehicle description to include year, make, model, and vehicle identification number; state tag data; operator s permit data; inspection and insurance data; vehicle decal number; parking lot assignment; and parking infractions.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C., Chapter 3, Powers; 5 U.S.C. 6101, Time clocks; 5 U.S.C. 6125, Hours of work; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 18 U.S.C. 1029, Access device fraud; 18 U.S.C. 1030, Computer fraud; 23 U.S.C. 401 et seq., National Highway Safety Act of 1966; E.O. 9397 (SSN); and E.O. 10540 (Security Requirements).

**PURPOSE(S):**

Information is maintained to by DLA security personnel to control access

onto DLA-managed installations and activities; access into DLA-controlled buildings and facilities, and access to DLA computer systems or databases.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:**

**STORAGE:**

Records are stored in paper and electronic form.

**RETRIEVABILITY:**

Retrieved by name, Social Security Number, bar code number, or decal number.

**SAFEGUARDS:**

Records are maintained in secure, limited access, or monitored work areas accessible only to authorized DLA personnel.

**RETENTION AND DISPOSAL:**

Vehicle registration records are destroyed when superseded or upon normal expiration or 3 years after revocation;

Individual badging and pass records are destroyed upon cancellation or expiration or 5 years after final action to bar from facility.

Database access records are maintained for the life of the employee and destroyed 1 year after employee departs.

Visitor and temporary passes, permits, and registrations are destroyed 2 years after final entry or 2 years after date of document, as appropriate.

**SYSTEM MANAGER(S) AND ADDRESS:**

Staff Director, Command Security, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Commanders of the Defense Logistics Agency Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA s compilation of systems of records notices.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, HQ DLA, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA s compilation of systems of records notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, HQ DLA, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA s compilation of systems of records notices.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

**RECORD SOURCE CATEGORIES:**

Information is supplied by security personnel and by individuals applying for access to DLA controlled installations, facilities, or databases.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 97–27154 Filed 10–14–97; 8:45 am]
**BILLING CODE 5000–04–F**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Privacy Act of 1974; System of Records Notice

**AGENCY:** Department of the Navy, DOD.
**ACTION:** Notice to amend a record system.

**SUMMARY:** The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The amendment will be effective on November 14, 1997, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: October 8, 1997.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**N01754–3**

**SYSTEM NAME:**

Navy Child Development Services Program *(February 22, 1993, 58 FR 10724).*

**CHANGES:**

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'Name; Social Security Number; case number; home address and telephone number; insurance coverage; names of parents and children; performance rating; complaints; background information, including medical, educational references, and prior work experience, information from the Naval Criminal Investigative Service (NCIS), the family advocacy program, base security, and state and local agencies; information related to screening, training, and implementation of the Family Child Care program; and reports of fire, safety, housing, and environmental health inspections. Children's records will also include developmental profiles.'

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).'

* * * * *

**STORAGE:**

Delete entry and replace with 'Paper and automated records.'

* * * * *

**SAFEGUARDS:**

Add to end of entry 'Computer files are protected by software programs that are password protected.'

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Policy Official: Bureau of Naval Personnel Detachment, Community Support Activities Branch (Pers-659), Naval Support Activity Memphis, 7800 Third Avenue, Building 457, Millington, TN 38054–5045.

Record Holder: Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses of Navy and Marine Corps activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.'

* * * * *

**N01754–3**

**SYSTEM NAME:**

Navy Child Development Services Program.

**SYSTEM LOCATION:**

Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses of Navy and Marine Corps activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Navy and Marine Corps service members and their families or dependents. In certain locations, DOD civilian employees may be eligible for services.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name; Social Security Number; case number; home address and telephone number; insurance coverage; names of parents and children; performance rating; complaints; background information, including medical, educational references, and prior work experience, information from the Naval Criminal Investigative Service (NCIS), the family advocacy program, base security, and state and local agencies; information related to screening, training, and implementation of the Family Child Care program; and reports of fire, safety, housing, and environmental health inspections. Children's records will also include developmental profiles.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; and E.O. 9397 (SSN).

**PURPOSE(S):**

To develop child care programs that meet the needs of children and families, provide child and family program eligibility and background information; verify health status of children and verify immunizations, note special program requirements; consent for access to emergency medical care; data required by USDA programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal officials involved in Child Care Services, including child abuse for the purpose of investigation and litigation.

To State and local officials involved with Child Care Services if required in the performance of their official duties relating to investigations.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper and automated records.

**RETRIEVABILITY:**

By last name of member and Social Security Number.

**SAFEGUARDS:**

Records are maintained in monitored or controlled areas accessible only to authorized personnel. Building or rooms are locked outside regular working hours. Computer files are protected by software programs that are password protected.

**RETENTION AND DISPOSAL:**

Records are kept for two years after individual is no longer in the Child Development Program and then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Policy Official: Bureau of Naval Personnel Detachment, Community Support Activities Branch (Pers-659), Naval Support Activity Memphis, 7800 Third Avenue, Building 457, Millington, TN 38054–5045.

Record Holder: Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses of Navy and Marine Corps activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals should provide proof of identity and full name.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals should provide proof of identity and full name.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information in this system comes from individuals either applying as child care providers or participant of the Family Child Care program; background checks from State and local authorities; housing officers; information from the Family Advocacy program; base security officers and base fire, safety and health officers; and local family child care monitors and parents of children enrolled.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any

right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 97–27152 Filed 10–14–97; 8:45 am]

BILLING CODE 5000–04–F

## DEPARTMENT OF EDUCATION

**[CFDA No: 84.195C]**

### Bilingual Education: Graduate Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

#### Purpose of Program

Provides fellowships, through institutions of higher education, to individuals who are engaged in masters and doctoral study related to instruction of limited English proficient children and youth.

**Note:** The Department will, because of the limited funds available, only consider applications that propose fellowships for masters and doctoral students. Fellowship applications for post-doctoral study will not be considered.

#### Eligible Applicants

Institutions of higher education (IHEs).

**Note:** Any individual wishing to obtain a fellowship must apply to an IHE approved for participation in this program, not to the U.S. Department of Education.

*Deadline for Transmittal of Applications:* December 5, 1997.

*Deadline for Intergovernmental Review:* February 5, 1998.

*Applications Available:* October 24, 1997.

*Available Funds:* $5,000,000.

*Estimated Range of Awards:* $2,000–$30,000 per individual fellow; $30,000–$300,000 per IHE.

*Estimated Average Size of Awards:* $13,000 per individual fellow; $150,000 per IHE.

*Estimated Number of Awards:* 384 individual fellowships; 35 participating IHEs.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 24 months for a master's program; up to 36 months for a doctoral program.

#### Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 34 CFR 75.51 and 75.60–75.62, 34 CFR parts 77, 79, 85, and (b) The regulations for this program in 34 CFR part 535.

#### Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority (34 CFR 75.101(c)(1)). However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications: Doctoral Programs of Study in Teacher Training.

Applications proposing programs of study that prepare teacher trainers and lead to a doctoral degree.

#### For Applications or Information Contact

Joyce M. Brown, U.S. Department of Education, 600 Independence Avenue, SW., room 5618, Switzer Building, Washington, D.C. 20202–6642. Telephone: (202) 205–9727. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**Note:** The official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

*Electronic Access to This Document:* Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

**Note:** The official version of a document is the document published in the **Federal Register**.

**Program Authority:** 20 U.S.C. 7475.

Dated: October 8, 1997.

**Delia Pompa,**

*Director, Office of Bilingual Education and Minority Languages Affairs.*

[FR Doc. 97–27167 Filed 10–14–97; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

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

**DATES:** Wednesday, October 5, 1997; 6 p.m.–9:30 p.m.

**ADDRESSES:** Ramada Inn, 420 South Illinois Avenue, Oak Ridge, Tennessee.

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

**SUPPLEMENTARY INFORMATION:**

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

*Tentative Agenda:* A presentation concerning the Y–12 Plant Bear Creek Valley watershed strategy for the Oak Ridge Reservation will be provided.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements

pertaining to agenda items should contact Sandy Ulrikson at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

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

Issued at Washington, DC, on October 9, 1997.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 97–27285 Filed 10–14–97; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Hanford Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

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

**DATES:** Thursday, November 6, 1997: 9 a.m.–5:00 p.m.; Friday, November 7, 1997: 8:30 a.m.–4:30 p.m.

**ADDRESSES:** Monarch Hotel, 12566 SE 9th Avenue, Portland, Oregon, 1–800–492–8700.

**FOR FURTHER INFORMATION CONTACT:** Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

**SUPPLEMENTARY INFORMATION:**

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

*Tentative Agenda:* The Board will receive information on and discuss issues related to: Maintaining Cleanup.

*Progress:* Board Near Term and Long Term Strategies, Environmental Management's Accelerating Cleanup: Focus on 2006 Plan and Contractor Integration Report, 200 Area Strategy, FY 1998 Budget Allocations, Project Hanford Management Contract Performance Evaluation (1997) and Performance Measures (1998), Transition Plan for Committee Chairs, Spent Nuclear Fuel Program, Plutonium Reclamation Facility Corrective Actions, Tank Waste Remediation System Privatization Set Aside, December.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments during the meeting (11:45 a.m. and 4:45 p.m.).

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on October 9, 1997.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 97–27286 Filed 10–14–97; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

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

**DATES:** Tuesday, October 28, 1997, 8:30 a.m.–5 p.m.; Wednesday, October 29, 1997, 8:30 a.m.–4 p.m.

**ADDRESSES:** Fairmont Hotel, 1717 North Akard Street, Dallas, Texas 75201.

**FOR FURTHER INFORMATION CONTACT:** Karol Hazard, Department of Energy, EM–22, Room 1H–087, 1000 Independence Avenue, SW, Washington, DC 20585, phone: (202) 586-7926, fax: (202) 586–0293.

**SUPPLEMENTARY INFORMATION:**

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

*Tentative Agenda:* This is a special-called Board Chairperson and Federal Coordinator meeting. It will include information sharing between the Board's site-groups, and discussions on policy and administrative issues, and specific EM initiatives.

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

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

also be made available by writing or calling Karol Hazard at the Board's office address or telephone number listed above.

Issued at Washington, DC on October 9, 1997.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 97–27288 Filed 10–14–97; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Pantex Plant, Amarillo, TX

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

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

**DATE AND TIME:** Tuesday, October 28, 1997: 1 p.m.–5 p.m.

**ADDRESSES:** Amarillo Public Library, Rooms A & B, 413 E. 4th Avenue, Amarillo, Texas.

**FOR FURTHER INFORMATION CONTACT:** Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

**SUPPLEMENTARY INFORMATION:**

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

Tentative Agenda:

1:00 p.m.—Welcome—Agenda Review—Approval of Minutes
1:10 p.m.—Co-Chair Comments
1:20 p.m.—Task Force Reports
1:40 p.m.—Subcommittee Reports
2:15 p.m.—Nominations Report
3:00 p.m.—Ex-Officio Reports
3:30 p.m.—Water Discussions—Exceedences
4:30 p.m.—Updates—Occurrence Reports—DOE
5:00 p.m.—Closing Remarks/Adjourn

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

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

Issued at Washington, DC on October 9, 1997.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 97–27289 Filed 10–14–97; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Research

### Energy Research Financial Assistance Program Notice 98–02; Experimental Program to Stimulate Competitive Research (EPSCoR); Building EPSCoR-State National Laboratory Partnerships

**AGENCY:** Office of Energy Research, U.S. Department of Energy.

**ACTION:** Notice inviting research grant applications.

**SUMMARY:** The Office of Basic Energy Sciences (BES) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of science, engineering, and mathematics, announces its interest in receiving grant applications for collaborative partnerships between academic or industrial researchers from states eligible for the DOE/EPSCoR Program and researchers at DOE's National Laboratories, facilities, and centers. The purpose of the DOE /EPSCoR program is to enhance the capability of designated states to conduct nationally-competitive energy-related research and to develop science and engineering manpower in energy-related areas to meet current and future needs. The purpose of this program notice is to initiate and promote partnering and collaborative relationships that build beneficial energy-related research programs.

**DATES:** Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 98–02, should be received by DOE by 4:30 P.M., E.S.T., December 3, 1997. A response discussing the potential program relevance of a formal application generally will be communicated to the applicant within 30 days of receipt. The deadline for receipt of formal applications is 4:30 P.M., E.S.T., February 10, 1998, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1998.

**ADDRESSES:** All preapplications, referencing Program Notice 98–02, should be sent to Ms. Donna J. Prokop, Division of Materials Sciences, ER–13, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications and send them to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 98–02. The above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna J. Prokop, DOE/EPSCoR Program Manager, Office of Basic Energy Sciences, ER–132, U. S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290,

Telephone: (301) 903–0511, or Internet e-mail address: donna.prokop@mailgw.er.doe.gov.

General information about the development and submission of preapplications, applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. Electronic access to the latest version of ER's Financial Assistance Guide is possible via the Internet at the following Web Site: http://www.er.doe.gov/production/grants/grants.html

**SUPPLEMENTARY INFORMATION:** To continue to enhance the competitiveness of states and territories identified for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR), DOE encourages the formation of partnerships between academic and industrial researchers in EPSCoR states and the researchers at DOE's National Laboratories, facilities and centers in scientific areas supported by DOE. These collaborations should address areas of research of current interest to the Department. Undergraduate and graduate students should be active members of the research team, and it is highly desirable that a student spend a summer or academic-year at the National Laboratory, facility or center. Subcontracting arrangements with DOE National Laboratories will not be permitted. DOE continues to restrict EPSCoR eligibility to the following states and territory: Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico.

To minimize undue effort on the part of applicants and reviewers, interested parties are invited and encouraged to submit preapplications. The preapplications will be reviewed relative to the scope and research needs of the Department of Energy. The brief preapplication should consist of three to five pages of narrative describing the research objectives and methods of accomplishment.

Telephone and FAX numbers are required parts of the preapplication, and electronic mail addresses are desirable. Instructions regarding the contents of a preapplication and other preapplication guidelines can be found on the ER Grants and Contracts Web Site at: http://www.er.doe.gov/production/grants/preapp.html

In addition to the project description all preapplications and formal applications must include the following information:

1. Applications should explain the relevance of the proposed research to the agency's programmatic needs. On the cover page, applicants should specify the relevant DOE technical program office, and if known, the name of the program manager, and telephone number. DOE program descriptions may be accessed via the web at http://www.doe.gov/.
2. Applications must demonstrate clear evidence of collaborative intent, including a delineation of each partner's role and contribution to the research effort as well as a ''Letter-of-Intent'' from the participating DOE National Laboratory, facility, or center.
3. Applications must explain the individual value to both the EPSCoR and the National Laboratory partners. There should be clear objectives, not necessarily the same, for each partner.

It is anticipated that approximately $750,000 will be available in FY 1998 for research that encourages and facilitates collaborative efforts between researchers EPSCoR states and researchers at DOE's National Laboratories, facilities, and centers. Multiple-year funding of grant awards is expected subject to satisfactory progress of the research, the availability of funds, and evidence of substantial interactions between the EPSCoR researchers and the National Laboratory partner. Awards are expected to range up to a maximum of $50,000 annually with terms from one to three years. The number of awards and range of funding will depend on the number of applications received and selected for award. All funds will be provided to the recipient organization within the EPSCoR state for the purpose of supporting activities in the EPSCoR state and may include travel and lodging, faculty or student stipends, materials, services and equipment.

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR Part 605:

1. Scientific and/or technical merit of the project.
2. Appropriateness of the proposed method or approach.
3. Competency of applicant's personnel and adequacy of proposed resources.
4. Reasonableness and appropriateness of the proposed budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The principal investigator should publish the results of the supported research in the peer-reviewed, archival scientific literature.

Applications received by ER under its normal competitive application mechanisms that meet the criteria outlined in this Notice may also be deemed appropriate for consideration under this announcement and may be funded under this program.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on October 3, 1997.

**John Rodney Clark,**

*Associate Director, for Resource Management, Office of Energy Research.*

[FR Doc. 97–27287 Filed 10–14–97; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–4745–000]**

### Alpena Power Marketing, L.L.C.; Notice of Filing

October 8, 1997.

On September 25, 1997, Alpena Power Marketing, L.L.C. (APM) petitioned the Commission for acceptance of APM's Rate Schedule FERC Tariff No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and waiver of certain Commission regulations.

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, 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 October 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27180 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP98–1–000]**

### Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 8, 1997.

Take notice that on October 1, 1997, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP98–1–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new point of delivery, located in Knox County, Ohio, to Columbia Gas of Ohio (COH), under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7(c) 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.

Columbia proposes to construct and operate an additional point of delivery of COH, in Knox County, Ohio and to reassign a portion of the Maximum Daily Delivery Obligation (MMDO) from an existing point of delivery to COH and institute a corresponding reduction at an existing point of delivery. Columbia states that as part of the firm transportation service to be provided, COH has requested that its existing Storage Service Transportation Agreement be amended by increasing the MMDO by 350 Dth/day at the proposed new point of delivery and reducing the MMDOs at the existing point of delivery by 350 Dth/day. Columbia estimates annual quantities of natural gas to be delivered at the new point of delivery to be 30,600 Dth annually.

Columbia asserts the end use of the new point of delivery will be industrial and utilized to serve a grain dryer operation. Columbia states the interconnecting and appurtenant facilities required to establish the new delivery point are estimated to cost $14,000, with COH reimbursing Columbia 100% of the total cost of the proposed construction.

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 Section 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.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27175 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–542–001]**

### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 2, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to become effective October 1, 1997:

[Substitute Twenty-First Revised Sheet No. 25]

On September 30, 1997, Columbia filed revised tariff sheets, in Docket No. RP97–542–000, to remove the SFC charge from its rates effective October 1, 1997. However, subsequent to that filing, Columbia has determined that it made an inadvertent error in Footnote 5 on Twenty-First Revised Sheet No. 25. The incremental surcharge applicable to the former X–70 Rate Schedule did not reflect the adjustment for the removal of the SFC rate component, but should have. Therefore, as shown on Substitute Twenty-First Revised Sheet No. 25, the instant filing incorporates a revision to Footnote 5 to reflect the removal of the SFC rate component.

Columbia states further that copies of this filing have been mailed to all of its customers, affected state regulatory commissions, and all parties in Docket No. RP95–408, et al proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27202 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98–2–2–000]**

### East Tennessee Natural Gas Company; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997 East Tennessee Natural Gas Company (East Tennessee) submitted Thirteenth Revised Sheet No. 4 for inclusion in East Tennessee's FERC Gas Tariff, Second Revised Volume No. 1. East Tennessee Tendered this revised tariff sheet as its Annual Transportation Cost Rate Adjustment (TCRA) filing to revise the TCRA commodity surcharge under Rate Schedules FT–A and FT–GS. East Tennessee requests an effective date of November 1, 1997.

East Tennessee states that Thirteenth Revised Sheet No. 4 reflects changes to its TCRA pursuant to Section 25 of the General Terms and Conditions of its tariff.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27182 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–287–007]**

## El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 1, 1997, El Paso Natural Gas Company (El Paso) tendered for filing to become a part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 1997:

Eight Revised Sheet No. 30

El Paso states that the tariff sheets are being filed to implement negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipeline and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27198 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–147–004]**

## Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 3, 1997, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective September 1, 1997:

Substitute Third Revised Sheet No. 220
Substitute Second Revised Sheet No. 220A
Substitute Second Revised Sheet No. 220B

Equitrans states that the proposed tariff sheets are submitted in compliance with the Letter Order issued by the Commission on September 18, 1997 in Docket No. RP96–147–003. Equitrans states that the Commission required equitrans to refile the tariff sheets to reflect a more detailed explanation of the ratchet mechanism for all peaking storage Rate Schedules and a definition of the total ratchet quantity. Equitrans states that the proposed tariff sheets incorporate these revisions.

Any person desiring to protest the filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20046, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27186 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–147–005]**

## High Island Offshore System; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 2, 1997, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective November 1, 1997:

Fifth Revised Sheet No. 57
First Revised Sheet No. 57A.
Third Revised Sheet No. 58
Third Revised Sheet No. 99
Second Revised Sheet No. 99A
Fifth Revised Sheet No. 110
First Revised Sheet No. 110A
Second Revised Sheet No. 110B
Original Sheet No. 110C

HIOS states that the tariff sheets are filed to comply with the Commission's directives in its June 13, 1997 and July 24, 1997 letter orders issued in the captioned proceedings regarding Order No. 587–C.

HIOS further states that copies of the filing were served on all affected entities.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27192 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–3923–000]**

## Infinite Energy, Inc.; Notice of Issuance of Order

October 9, 1997.

Infinite Energy, Inc. (Infinite) submitted for filing a rate schedule under which Infinite will engage in wholesale electric power and energy transactions as a marketer. Infinite also requested waiver of various Commission regulations. In particular, Infinite requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Infinite.

In October 2, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted

requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Infinite 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).

Absent a request for hearing within this period, Infinite is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance of assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Infinite's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 3, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27248 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–154–007]**

## Koch Gateway Pipeline Company; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in the filing, to become effective November 1, 1997.

Koch states that this filing is in compliance with the Office of Pipeline Regulation's Letter Order, in Docket No. RP97–154–003, issued June 4, 1997. Koch has revised the above listed tariff sheets pursuant to the letter order. The revised tariff sheets reflect GISB standards to become effective November 1, 1997.

Koch also states that it has served copies of this filing upon each person on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided by Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27193 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–4257–000]**

## Mid-Power Service Corporation; Notice of Issuance of Order

October 9, 1997.

Mid-Power Service Corporation (Mid-Power) submitted for filing a rate schedule under which Mid-Power will engage in wholesale electric power and energy transactions as a marketer. Mid-Power also requested waiver of various Commission regulations. In particular, Mid-Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Mid-Power.

On September 30, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Mid-Power 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).

Absent a request for hearing within this period, Mid-Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Mid-Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 30, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27247 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–155–007]**

## Mobile Bay Pipeline Company; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997, Mobile Bay Pipeline Company (Mobile Bay) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1997:

Third Revised Sheet No. 81
Third Revised Sheet No. 82
Fourth Revised Sheet No. 83
Third Revised Sheet No. 84
Third Revised Sheet No. 129
Third Revised Sheet No. 130
Second Revised Sheet No. 131
Third Revised Sheet No. 132
Second Revised Sheet No. 133
Second Revised Sheet No. 184
Second Revised Sheet No. 185
Third Revised Sheet No. 186
First Revised Sheet No. 186A
First Revised Sheet No. 187
First Revised Sheet No. 188
Original Sheet No. 189
Original Sheet No. 190
Second Revised Sheet No. 208

Mobile Bay states that this filing is in compliance with the Office of Pipeline Regulation's Letter Order, in Docket No, RP97–155–002, issued June 4, 1997. Mobile Bay has revised the above listed tariff sheets pursuant to the letter order. The revised tariff sheets reflect GISB standards to become effective November 1, 1997.

Mobile Bay also states that it has served copies of this filing upon each person on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27195 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–4623–000]**

## Montaup Electric Company; Notice of Filing

October 8, 1997.

Take notice that on September 16, 1997, Montaup Electric Company (Montaup) filed (1) executed unit sales service agreements under Montaup's FERC Electric Tariff, Original Volume No. III; and (2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC Electric Tariff, Original Volume No. IV. The service agreements under both tariffs are between Montaup and following companies (Buyers):

1. CPS Capital, Ltd. (CPS)
2. Edison Source (ESRC)
3. New Energy Ventures, Inc. (NEV)
4. Northeast Energy Services, Inc. (NORESCO)
5. Sonat Power Marketing L.P. (SPLMP)
6. Tractebel Energy Marketing, Inc. (Tractebel)
7. Williams Energy Services Company (WESCO) (System Only)

Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of September 16, 1997. No transactions have occurred under any of the agreements.

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 October 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.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27179 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–1–010]**

## National Fuel Gas Supply Corporation; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

National Fuel states that the purpose of this filing is to submit actual tariff sheets revised to conform to the Commission letter order issued on June 19, 1997, 1997 in Docket No. RP97–1–007 and to conform with the GISB Standards incorporated by Order No. 587–C, Standards for Business Practices of Interstate Natural Gas Pipelines.

National Fuel states that it is serving copies of this filing with its firm customers, interested state commissions and each person designated on the official service list compiled by the Secretary.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27187 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–443–002]**

## Northern Border Pipeline Company; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 3, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective October 3, 1997:

Substitute First Revised Sheet Number 123

Northern Border asserts that the purpose of this filing is to comply with Order No. 636–C, issued February 27, 1997, in Docket Nos. RM91–11–006 and RM87–34–072 and the Commission's letter order issued September 24, 1997. In Order No. 636–C, the Commission required that any pipeline with a right-of-first refusal tariff provision containing a contract term longer than five years revise its tariff to reflect the new five year cap. Northern Border has now included a provision which allows a shipper to retain its capacity for a term of five years at the rate contained in the Best Bid.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27200 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–131–005]**

### Overthrust Pipeline Company; Notice of Tariff Filing

October 8, 1997.

Take notice that on October 2, 1997, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the below-listed tariff sheets, to be effective November 1, 1997:

Original Sheet No. 61A and 78D
First Revised Sheet Nos. 34A, 67C, 78A, 78B and 78C
Second Revised Sheet Nos. 33, 35A, 60, 61, 67A, 67B and 78
Third Revised Sheet Nos. 1, 34 and 67
Fifth Revised Sheet No. 30

Overthrust states that the filing is being made in compliance with the September 26, 1997, OPR Director Letter Order in Docket No. RP97–131–002.

Overthrust states that the proposed tariff sheets implement the requirements of Order No. 587–C and comply with the Commission's September 26 directive to (1) correct a typographical error in Standard 2.3.31 and (2) revise the tariff language that incorporates GISB Standard 2.3.9.

Overthrust states further that a copy of this filing has been served upon its customers and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27190 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–455–001]**

### Overthrust Pipeline Company; Notice of Tariff Compliance Filing

October 8, 1997.

Take notice that on October 3, 1997, Overthrust Pipeline Company (Overthrust) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute First Revised Sheet No. 67A to become effective September 22, 1997.

Overthrust states that the filing is being made in compliance with the Commission's September 19, 1997, Order Accepting Tariff Sheets Subject to Conditions. Overthrust states that this tariff filing complies with the September 19 order by deleting from Section 15.2(b) of the General Terms and Conditions of its tariff the sentence ''Intra-day nominations received during this batch period may not bump gas that is already flowing.''

Overthrust states that a copy of this filing has been served upon its customers and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27201 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–1847–001]**

### Pacific Gas & Electric Company; Notice of Filing

October 8, 1997.

Take notice that on August 28, 1997, Pacific Gas & Electric Company tendered for filing revised tariff pages for Rate Schedule FERC Nos. 88, 91, 136, 138 and 176 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 October 17, 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.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27176 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–4829–000]**

### PP&L, Inc., Notice of Filing

October 8, 1997.

Take notice that on September 30, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) filed, pursuant to Federal Power Act Section 205, a request for a change in the PP&L Group Zone revenue requirement contained within the open access transmission tariff of the Pennsylvania—New Jersey—Maryland Interconnection (PJM). PP&L requests and effective date of November 1, 1997, for its requested change.

PP&L states that copies of this filing have been served on the PJM Office of Interconnection, all PJM Regional Transmission Owners, and the public utility commissions of all states in the PJM control area.

Any person desiring to be heard or to protest such 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 and protests should be filed on or before October 21, 1997. Protests will be considered by the Commission to determine the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27181 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–4830–000**

## PP&L, Inc.; Notice of Filing

October 8, 1997.

Take notice that on September 30, 1997, PP&L Inc. (formerly known as Pennsylvania Power & Light Company) filed, pursuant to Federal Power Act Section 205, a request for a change in the PP&L revenue requirements and transmission service rates contained in PP&L's Open Access Transmission Tariff (Tariff). PP&L requests an effective date of November 1, 1997, for its requested changes.

PP&L states that copies of this filing have been served on all persons that have signed service agreements under PP&L's Tariff, and all persons on the official service list in FERC Docket No. OA96–142–000 (the docket in which PP&L filed its Order No. 888 Tariff on July 9, 1996, an in which PP&L's transmission and ancillary service rates currently are being litigated before a FERC administrative law judge).

Any person desiring to be heard or to protest such 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 and protests should be filed on or before October 21, 1997. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27183 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–109–008]**

## Sabine Pipe Line Company; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 6, 1997, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets proposed to be effective November 1, 1997:

Substitute Sixth Revised Sheet No. 20
Substitute Second Revised Sheet No. 225
Substitute Third Revised Sheet No. 297

Sabine states that the filing is being made to comply with the provisions of Order No. 587–C issued March 4, 1997, in Docket No. RM96–1–004, and the Commission's order issued June 18, 1997 in Docket No. RP97–109–004.

Sabine respectfully requests that the Commission grant a waiver of § 154.207 of its regulations, and any other waivers that may be necessary, in order that the tariff sheets listed above may be made effective November 1, 1997.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance wit Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27188 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–3281–001]**

## South Carolina Electric and Gas Company; Notice of Filing

October 8, 1997.

Take notice that on August 28, 1997, South Carolina Electric and Gas Company tendered for filing its refund report 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, 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 October 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.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27177 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–164–004]**

## Texas-Ohio Pipeline, Inc.; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997, Texas-Ohio Pipeline, Inc. (TOP), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with a proposed effective date November 1, 1997:

Second Revised Sheet No. 41
First Revised Sheet No. 54A
First Revised Sheet No. 57A
First Revised Sheet No. 78

TOP states that these tariff sheets are being filed to comply with the Letter Order issued June 30, 1997, by the Commission, in Docket No. RP97–164–002. In that Letter Order, the Commission had preliminarily approved pro forma sheets filed by TOP

in compliance the Commission's Order No. 587–C, subject to the filing of certain revised tariff sheets to become effective November 1, 1997.

TOP further states that copies of this filing have been served on TOP's jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27197 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. CP88–391–021 and RP93–162–006]**

## Transcontinental Gas Pipe Line Corporation; Notice of Annual Cash-Out Report

October 8, 1997.

Take notice that on September 25, 1997, Transcontinental Gas Pipe Line Company (Transco) filed its annual report of cash-out purchases for the period August 1, 1996, through July 31, 1997. The report was filed to comply with the cash-out provisions in Section 15 of the General Terms and Conditions of Transco's FERC Gas Tariff.

Pursuant to the requirements of the Commission's order issued December 3, 1993, in Docket No. RP93–162–002, Transco also submitted a summary of activity showing the volumes and amounts paid under each Pipeline Interconnect Balancing Agreement during the aforementioned period.

Transco states that the report shows that for the annual period ending July 31, 1997, Transco had a net underrecovery of $6,128,461. Transco has carried forward a net underrecovery of $1,268,589 from the previous twelve-month period. This results in a net underrecovery cash-out balance of $7,397,050 as of July 31, 1997. Transco states that in accordance with Section 15 of its tariff it will carry forward such net underrecovery to offset any net overrecovery that may occur in future cash-out periods.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 16, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27174 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## U–T Offshore System; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 2, 1997, U–T Offshore System (U–TOS), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective November 1, 1997:

Third Revised Sheet No. 46
First Revised Sheet No. 46A
Second Revised Sheet No. 67A
Seventh Revised Sheet No. 73
Second Revised Sheet No. 73A
First Revised Sheet No. 73B

U–TOS states that the tariff sheets are filed to comply with the Commission's directives in its June 13, 1997 and July 24, 1997 letter orders issued letter order in the captioned proceedings regarding Order No. 587–C.

U–TOS further states that copies of the filing were served on all affected entities.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27191 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–163–005]**

## Westgas Interstate, Inc.; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997, WestGas InterState, Inc. (WGI), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date November 1, 1997:

Third Revised Sheet No. 29
First Revised Sheet No. 45A
First Revised Sheet No. 49A
First Revised Sheet No. 92

WGI states that these tariff sheets are being filed to comply with the Letter Order issued September 22, 1997, Office of Pipeline Regulation, in Docket No. RP97–163–002. In that Letter Order, the Director had preliminarily approved pro forma sheets filed by WGI in compliance with the Commission's Order No. 587–C, subject to the filing of certain revised tariff sheets, to become effective November 1, 1997.

WGI further states that copies of this filing have been served on WGI's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27196 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–407–001]**

### Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 3, 1997, William Natural Gas Company (WNG), tendered for filing to become part of the FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of August 1, 1997:

Substitute First Revised Sheet Nos. 8E and 8F

WNG states that it made a filing in Docket Nos. RP97–407, et al., on July 1, 1997 to submit its third quarter 1997 report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds. In preparation of the fourth quarter report, WNG discovered two new firm contracts had gone into effect on July 1, 1997, but had not been finalized when the third quarter report was made.

WNG states that the instant filing is being made to revise Schedule 4 of the original failing to reflect the new contracts. All other aspects of WNG's July 1 filing are unchanged.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27199 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG98–1–000, et al.]**

### KLT Power Inc., et al.; Electric Rate and Corporate Regulation Filings

October 8, 1997.

Take notice that the following filings have been made with the Commission:

**1. KLT Power Inc.**

[Docket No. EG98–1–000]

On October 3, 1997, KLT Power Inc. (Applicant), whose business address is 1201 Walnut, Kansas City, MO 64106 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant intends, directly or indirectly, to own or operate all or part of eligible facilities, including without limitation eligible facilities located in China, Argentina, India and the United States.

*Comment date:* October 29, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**2. United States Department of Energy—Western Area Power Administration**

[Docket No. EF97–5011–000]

Take notice that on September 23, 1997, the Deputy Secretary of the Department of Energy submitted a request for final confirmation and approval of certain rate schedules for the Western Area Power Administration that she had previously confirmed and approved on an interim basis, to be effective on October 1, 1997. The rate schedules are Rate Schedules CV–F9, CV–FT3, CV–NFT3, CV–TPT4, CV–NWT1, CV–PSS1, CV–RFS1, CV–EID1, CV–SPR1, CV–SUR1, COTP–FT1, and COTP–NFT1 for the Central Valley Project and for the California-Oregon Transmission Project.

The Deputy Secretary states that the rates in the Rate Schedules CV–F9, CV–FT3, CV–NFT3, CV–TPT4, CV–NWT1, CV–PSS1, CV–RFS1, CV–EID1, CV–SPR1, CV–SUR1, COTP–FT1, and COTP–NFT1 will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval of these or of substitute rates on a final basis, for the period from October 1, 1997 to September 30, 2002.

*Comment date:* October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**3. ProMark Energy, Inc.**

[Docket Nos. ER97–705–000 and ER97–4374–000]

Take notice that on September 24, 1997, ProMark Energy, Inc. moved to withdraw service agreements with PECO Energy Company and Long Island Lighting Company filed in the referenced dockets on August 13 and August 26, 1997, respectively.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**4. MidAmerican Energy Company**

[Docket No. ER97–2984–000]

Take notice that on September 26, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing an amendment to its initial filing in this proceeding consisting of additional work papers intended to support the computation of charges for direct assignment facilities.

MidAmerican proposes an effective date of July 1, 1997, for both the Agreement and the First Amendment which have been filed in this proceeding and has previously requested a waiver of the Commission's 60-day notice requirement.

Copies of the filing were served on the City of Sergeant Bluff, Iowa.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**5. Columbus Southern Power Company**

[Docket No. ER97–3213–000]

Take notice that Columbus Southern Power Company (CSP), on October 3, 1997, tendered for filing with the Commission an amendment to its original filing dated June 3, 1997, as requested by the Federal Energy Regulatory Commission staff. The initial filing included a Facilities and Operations Agreement and a Facilities Service Agreement between CSP, Buckeye Power, Inc. (Buckeye) and Guernsey-Muskingum Electric Cooperative, Inc. (GME). GME is an Ohio electricity cooperative and a member of Buckeye Power, Inc.

GME has requested CSP provide a new delivery point pursuant to provisions of the Power Delivery Agreement between CSP, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968. CSP

requests an effective date of June 15, 1997, for the tendered agreements.

CSP states that copies of its filing were served upon the Guernsey-Muskingum Electric Cooperative, Inc., Buckeye Power, Inc., R&F Coal Company and the Public Utilities Commission of Ohio.

*Comment date:* October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**6. Consolidated Edison Company of New York, Inc.**

[Docket Nos. ER97–3791–001 and ER97–3796–001]

Take notice that on September 26, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing with the Commission, its Refund Report made in compliance with the Commission's Order issued August 29, 1997 in the above referenced dockets.

Con Edison states that on September 25, 1997, refunds were sent to Long Island Lighting Company and PanEnergy Trading and Market Services, L.L.C. The refunds included interest through September 20, 1997 in accordance with Section 35.19A of the Commission's Regulations.

*Comment date:* October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**7. The Detroit Edison Company**

[Docket No. ER97–4110–000]

Take notice that on September 24, 1997, The Detroit Edison Company filed an amendment to its filing in the above-referenced docket.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**8. Entergy Services, Inc.**

[Docket No. ER97–4151–000]

Take notice that on September 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (Entergy Gulf), tendered for filing an amendment to its August 11, 1997, filing in this docket.

*Comment date:* October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**9. Cleveland Electric Illuminating Company and The Toledo Edison Company**

[Docket No. ER97–4158–000]

Take notice that on September 25, 1997, the Centerior Service Company as Agent for the Cleveland Electric Illuminating Company and The Toledo Edison Company filed amended Service Agreements, in the above referenced docket, to provide Non-Firm Point-to-Point Transmission Service for American Electric Power, AES Power, Incorporated, Cinergy Services, Incorporated, Engage Energy Incorporated, Noram Energy Services, and Pacificorp Power Marketing, the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreements is August 12, 1997.

*Comment date:* October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**10. The Detroit Edison Company**

[Docket No. ER97–4406–000]

Take notice that on September 29, 1997, The Detroit Edison Company filed an amendment in the above-referenced docket.

*Comment date:* October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**11. The Detroit Edison Company**

[Docket No. ER97–4409–000]

Take notice that on September 29, 1997, The Detroit Edison Company filed an amendment in the above-referenced docket.

*Comment date:* October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**12. The Detroit Edison Company**

[Docket No. ER97–4411–000]

Take notice that on September 29, 1997, The Detroit Edison Company filed an amendment to its filing in the above-referenced docket.

*Comment date:* October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

**13. American Electric Power Company**

[Docket No. ER97–4537–000]

Take notice that on October 3, 1997, American Electric Power Company tendered for filing an amended Notice of Termination in the above-referenced docket.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**14. Southern Company Services**

[Docket No. ER97–4635–000]

Take notice that on September 16, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Operating Companies) filed four (4) service agreements for short-term firm point-to-point transmission service under Part II of the Open Access Transmission Tariff of Southern Companies. Two (2) of those agreements are between SCS, as agent for Southern Companies, and Electric Clearinghouse, Inc. The other two (2) agreements are between SCS, as agent for the Operating Companies, and (i) Entergy Services, Inc., and (ii) Sonat Power Marketing, L.P. In addition, SCS, as agent for the Operating Companies, also filed Notice of Cancellation for those service agreements, which agreements were for daily transmission service.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**15. MidAmerican Energy Company**

[Docket No. ER97–4677–000]

Take notice that on September 19, 1997, MidAmerican Energy Company (MidAmerican) filed with the Commission a Notice of Cancellation pursuant to § 35.15 of the Commission's Regulations. MidAmerican states that the rate schedules to be canceled effective as of 11:59 p.m. on July 31, 1997 are as follows:

1. Full Requirements Power Agreement dated September 9, 1987, between Iowa Public Service Company (a predecessor company of MidAmerican) and City of Rockford, Iowa. This Full Requirements Power Agreement has been designated as MidAmerican Rate Schedule Electric Tariff No. 7, Service Agreement No. 8.

MidAmerican requests a waiver of § 35.15 to the extent that this Notice of Cancellation has not been filed within the time required by such section. MidAmerican states that this Notice of Cancellation was not filed earlier because the termination of the agreement identified in the Notice of Cancellation was subject to the City's execution of a contract with another supplier to serve the City's capacity and energy needs. The City began receiving service from another supplier on August 1, 1997.

MidAmerican has mailed a copy of this filing to City of Rockford, IA, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**16. Illinois Power Company**

[Docket No. ER97–4678–000]

Take notice that on September 19, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which PPG Industries, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 15, 1997.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**17. Illinois Power Company**

[Docket No. ER97–4679–000]

Take notice that on September 19, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Virginia Electric and Power Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 15, 1997.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**18. Starghill Energy Corp.**

[Docket No. ER97–4680–000]

Take notice that on September 19, 1997, Starghill Energy Corp. (Starghill), petitioned the Commission for acceptance of Starghill's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Starghill, intends to engage in wholesale electric power and energy purchases and sales as a marketer. Starghill, is not in the business of generating or transmitting electric power. Starghill, is a Michigan, Corporation which markets natural gas, designs and constructs natural gas refuel stations and converts vehicles to operate on natural gas and propane.

*Comment date*: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**19. Union Electric Company**

[Docket No. ER97–4681–000]

Take notice that on September 19, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between UE and LG&E Energy Marketing Inc., MidAmerican Energy Company and Western Resources. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in [Docket No. OA96–50.

*Comment date*: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**20. Southern California Edison Company**

[Docket No. ER97–4682–000]

Take notice that on September 19, 1997, Southern California Edison Company (Edison), tendered for filing the Edison-Vernon 1997 Restructuring Agreement (Restructuring Agreement) between Edison and the City of Vernon, California (Vernon), and a Notice of Cancellation of various agreements and rate schedules applicable to Vernon. Included in the Restructuring Agreement as Appendices C, D, E, and F are: Amendment No. 1 to the Edison-Vernon FTS Agreement, Amendment No. 2 to the Edison-Vernon Mead FTS Agreement, Amendment No. 1 to the Edison-Vernon Victorville-Lugo FTS Agreement, and the Laguna Bell-Vernon Interconnection Service Agreement.

The Restructuring Agreement, including all of its Appendices, are the result of negotiations between Edison and Vernon to modify existing contracts to accommodate the emerging Independent System Operator/Power Exchange market structure. The Restructuring Agreement significantly simplifies the existing operational arrangements between Edison and Vernon. In addition, the Restructuring Agreement provides for cancellation of all existing bundled service arrangements and obligations between Edison and Vernon.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date*: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**21. Ohio Edison Company; Pennsylvania Power Company**

[Docket No. ER97–4683–000]

Take notice that on September 19, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Non-Firm Point-to-Point Transmission Service with Morgan Stanley Capitol Group, Inc., Virginia Electric and Power Company, and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. These Service Agreements will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

*Comment date*: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**22. Ohio Edison Company and Pennsylvania Power Company**

[Docket No. ER97–4684–000]

Take notice that on September 19, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Northeast Utilities Service Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

*Comment date*: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**23. Columbus Southern Power Company**

[Docket No. ER97–4685–000]

Take notice that on September 19, 1997, Columbus Southern Power Company (CSP), tendered for filing with the Commission a Letter Agreement dated August 6, 1997, between CSP, Buckeye Power, Inc. (Buckeye), and South Central Power Cooperative (SCP). SCP is an Ohio electricity cooperative and a member of Buckeye Power, Inc.

SCP has requested CSP provide a new delivery point pursuant to provisions of the Power Delivery Agreement between CSP, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968.

CSP states that copies of its filing were served upon the South Central Power Cooperative, Buckeye Power, Inc., and the Public Utilities Commission of Ohio.

*Comment date*: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**24. Atlantic City Electric Company**

[Docket No. ER97–4686–000]

Take notice that on September 19, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing a service agreement under which Atlantic Electric will sell capacity and energy to American Electric Power Company, Inc., (AEP) under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreement be accepted to

become effective on September 16, 1997.

Atlantic Electric states that a copy of the filing has been served on AEP.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**25. Orange and Rockland Utilities, Inc.**

[Docket No. ER97–4687–000]

Take notice that on September 19, 1997, Orange and Rockland Utilities, Inc. (O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement under which O&R will provide capacity and/or energy to PacifiCorp Power Marketing, Inc. (PacifiCorp).

O&R requests waiver of the notice requirement so that the service agreement with Central Maine becomes effective as of September 18, 1997.

O&R has served copies of the filing on The New York State Public Service Commission and PacifiCorp.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**26. Arizona Public Service Company**

[Docket No. ER97–4688–000]

Take notice that on September 22, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3 with City of Burbank, Morgan Stanley Capital Group Inc., and Tractabel Energy Marketing, Inc.

A copy of this filing has been served on the Arizona Corporation Commission, City of Burbank, Morgan Stanley Capital Group Inc., and Tractabel Energy Marketing, Inc.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**27. Arizona Public Service Company**

[Docket No. ER97–4689–000]

Take notice that on September 22, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Delhi Energy Services, Inc.

A copy of this filing has been served on Delhi Energy Services, Inc., and the Arizona Corporation Commission.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**28. Arizona Public Service Company**

[Docket No. ER97–4690–000]

Take notice that on September 22, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide umbrella short-term Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Delhi Energy Services, Inc.

A copy of this filing has been served on Delhi Energy Services, Inc., and the Arizona Corporation Commission.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**29. PSI Energy, Inc.**

[Docket No. FA96–61–001]

Take notice that on September 17, 1997, PSI Energy, Inc., tendered for filing its refund report in the above-referenced docket.

*Comment date:* October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell**

*Secretary*

[FR Doc. 97–27244 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC97–59–000, et al.]**

## Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 7, 1997.

Take notice that the following filings have been made with the Commission:

**1. Pacific Gas and Electric Company**

[Docket No. EC97–59–000]

Take notice that on September 29, 1997, Pacific Gas and Electric Company (PG&E) tendered for acceptance of this filing an Application by and between PG&E and the Modesto Irrigation District (MID) entitled ''Pacific Gas and Electric Company's Application for Authorization for the Sale of Transmission Facilities to Modesto Irrigation District.''

The Application was entered into for the purpose of PG&E's sale of certain FERC-jurisdictional transmission facilities to MID. These facilities have an original cost of $547,405.

Copies of this filing have been served upon the California Public Utilities Commission, MID and Destec Power Services.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**2. Lake Benton Power Partners LLC**

[Docket No. EG97–86–000]

On September 30, 1997, Lake Benton Power Partners LLC, 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Lake Benton Power Partners LLC is an indirect subsidiary company of Enron Corp. Lake Benton Power Partners LLC will build and own a wind turbine generation facility (the Lake Benton Facility) near Lake Benton, Minnesota. The Lake Benton Facility will consist of approximately 143 wind turbines, with an aggregate nameplate capacity of 107.25 megawatts. Electric energy produced by the Lake Benton Facility will be sold to Northern States Power Company.

*Comment date:* October 28, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy of the application.

**3. Northern States Power Company (Minnesota Company)**

[Docket No. ER97–4641–000]

Take notice that on September 17, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing a Short-Term Firm Transmission Service Agreement between NSP and NSP-Wholesale.

NSP requests that the Commission accept the agreement effective August 26, 1997, and requests waiver of the Commission's notice requirements in

order for the agreement to be accepted for filing on the date requested.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**4. Tucson Electric Power Company**

[Docket No. ER97–4643–000]

Take notice that on September 17, 1997, Tucson Electric Power Company (TEP), tendered for filing two (2) service agreements for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under these agreements. The service agreements are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc. dated August 28, 1997. Service under this agreement commenced on August 19, 1997.

2. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated September 4, 1997. Service under this agreement commenced on August 26, 1997.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**5. Texas Utilities Electric Company**

[Docket No. ER97–4644–000]

Take notice that on September 17, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing an executed transmission service agreement (TSA) with The AC Power Group for certain Economy Energy Transmission Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on The AC Power Group, as well as the Public Utility Commission of Texas.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**6. Maine Electric Power Company**

[Docket No. ER97–4645–000]

Take notice that on September 17, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Short-Term Firm Point-to-Point Transmission service entered into with Tractebel Energy Marketing, Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**7. Virginia Electric and Power Company**

[Docket No. ER97–4647–000]

Take notice that on September 18, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with NCEMC under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to the Transmission Customer as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**8. Alabama Power Company**

[Docket No. ER97–4648–000]

Take notice that on September 18, 1997, Southern Company Services, Inc., as agent for Alabama Power Company (APCo), tendered for filing a Transmission Service Delivery Point Agreement dated April 8, 1997, which reflects the revised delivery point voltage levels of service to Central Alabama Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147). The parties request an effective date of October 1, 1997.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**9. Alabama Power Company**

[Docket No. ER97–4649–000]

Take notice that on September 18, 1997, Southern Company Services, Inc., as agent for Alabama Power Company (APCo), tendered for filing a Transmission Service Delivery Point Agreement dated April 8, 1997, which reflects the revised delivery point voltage levels of service to Dixie Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147). The parties request an effective date of October 1, 1997.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**10. Alabama Power Company**

[Docket No. ER97–4650–000]

Take notice that on September 18, 1997, Southern Company Services, Inc., as agent for Alabama Power Company (APCo), tendered for filing a Transmission Service Delivery Point Agreement dated April 8, 1997, which reflects the revised delivery point voltage levels of service to Pioneer Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147). The parties request an effective date of October 1, 1997.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**11. Virginia Electric and Power Company**

[Docket No. ER97–4651–000]

Take notice that on September 18, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Virginia Electric and Power Company and Minnesota Power and Light Company under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to Minnesota Power and Light Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Minnesota Public Utilities Commission, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**12. Virginia Electric and Power Company**

[Docket No. ER97–4655–000]

Take notice that on September 18, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with NorAm Energy Services, Inc., Entergy Power Marketing Corp., Delhi Energy Services, Inc., Florida Power Corporation, Minnesota Power & Light Company and NCEMC under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Florida Public Service Commission, the Minnesota Public Utilities Commission, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**13. Commonwealth Edison Company**

[Docket No. ER97–4656–000]

Take notice that on September 18, 1997, Commonwealth Edison Company (ComEd) submitted for filing a Short-Term Firm Service Agreement with Illinois Municipal Electric Agency (IMEA), a Non-Firm Service Agreement with QST Energy Trading (QST), a Non-Firm Service Agreement with Northeast Utilities (Northeast), a Non-Firm Service Agreement with IMEA, and a Non-Firm Service Agreement with ProLiance Energy, LLC (ProLiance), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd also submitted for filing a revised Index of Customers reflecting the addition of the five new customers and a name change for current customer, Koch Power Services, Inc. Koch Power Services, Inc., has been renamed Koch Energy Trading, Inc.

ComEd requests various effective dates for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon IMEA, QST, Northeast, ProLiance, Koch Energy Trading, Inc., and the Illinois Commerce Commission.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**14. Wisconsin Electric Power Co.**

[Docket No. ER97–4657–000]

Take notice that on September 18, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date September 1, 1997. Wisconsin Electric is authorized to state that Wheeled Electric Power Company joins in the requested effective date.

Copies of the filing have been served on Wheeled Electric Power Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**15. Maine Electric Power Company Inc.**

[Docket No. ER97–4658–000]

Take notice that on September 18, 1997, Maine Electric Power Company, Inc. (MEPCO), tendered for filing a service agreement for Long-Term Firm Point-to-Point Transmission service entered into with Northeast Utilities Service Company. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**16. Cinergy Services, Inc.**

[Docket No. ER97–4659–000]

Take notice that on September 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Morgan Stanley Capital Group Inc. (Morgan Stanley).

Cinergy and Morgan Stanley are requesting an effective date of August 19, 1997.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**17. Cinergy Services, Inc.**

[Docket No. ER97–4660–000]

Take notice that on September 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and ProLiance Energy, LLC (ProLiance).

Cinergy and ProLiance are requesting an effective date of September 15, 1997.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**18. Cinergy Services, Inc.**

[Docket No. ER97–4661–000]

Take notice that on September 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and ProLiance Energy, LLC (ProLiance).

Cinergy and ProLiance are requesting an effective date of September 15, 1997.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**19. Cinergy Services, Inc.**

[Docket No. ER97–4662–000]

Take notice that on September 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated August 1, 1997 between Cinergy, CG&E, PSI and Constellation Power Source, Inc. (Constellation).

The Interchange Agreement provides for the following service between Cinergy and Constellation:

11. Exhibit A—Power Sales by Constellation
12. Exhibit B—Power Sales by Cinergy

Cinergy and Constellation have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Constellation Power Source, Inc., the Public Service Commission of Maryland, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**20. Additional Signatory to PJM Interconnection, L.L.C. Operating Agreement**

[Docket No. ER97–4664–000]

Take notice that on September 18, 1997, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership application of Eastern Power Distribution, Inc., and South Carolina Electric & Gas Company. PJM requests an effective date of September 18, 1997.

*Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.*

**21. Cinergy Services, Inc.**

[Docket No. ER97–4665–000]

Take notice that on September 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated July 1, 1997, between Cinergy, CG&E, PSI and Eastern Power Distribution, Inc. (EPDI).

The Interchange Agreement provides for the following service between Cinergy and EPDI:

1. Exhibit A—Power Sales by EPDI
2. Exhibit B—Power Sales by Cinergy

Cinergy and EPDI have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Eastern Power Distribution, Inc., the Virginia State Corporation Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**22. Carolina Power & Light Company**

[Docket No. ER97–4666–000]

Take notice that on September 18, 1997, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer: Florida Power Corporation. Service to the Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**23. PacifiCorp**

[Docket No. ER97–4667–000]

Take notice that on September 22, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Service Agreement with Public Utility District No. 1 of Cowlitz County (Cowlitz) under PacifiCorp's FERC Electric Tariff, Original Volume No. 12.

Copies of this filing were supplied to Cowlitz, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**24. Boston Edison Company**

[Docket No. ER97–4668–000]

Take notice that on September 18, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order No. 888 Tariff (Tariff) for NP Energy Inc., (NP Energy). Boston Edison requests that the Service Agreement become effective as of August 1, 1997.

Edison states that it has served a copy of this filing on NP Energy and the Massachusetts Department of Public Utilities.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**25. Houston Lighting & Power Company**

[Docket No. ER97–4670–000]

Take notice that on September 17, 1997, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with NP Energy, Inc., (NP Energy) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Second Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of September 17, 1997.

Copies of the filing were served on NP Energy and the Public Utility Commission of Texas.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**26. Central Illinois Light Company**

[Docket No. ER97–4671–000]

Take notice that on September 19, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreement for one new customer, Southern Energy Trading and Marketing, Inc.

CILCO requested an effective date of September 15, 1997.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**27. Northern Indiana Public Service Company**

[Docket No. ER97–4672–000]

Take notice that on September 19, 1997, Northern Indiana Public Services Company (Northern), filed a Network Integration Transmission Service Agreement pursuant to its Open Access Transmission Tariff and a Service Agreement pursuant to its Power Sales Tariff with the Town of Argos, Indiana.

Copies of this filing have been sent to the Town of Argos, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**28. Union Electric Company**

[Docket No. ER97–4673–000]

Take notice that on September 19, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and Commonwealth Edison Company and LG&E Energy Marketing Inc. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**29. Union Electric Company**

[Docket No. ER97–4674–000]

Take notice that on September 19, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and LG&E Energy Marketing Inc. (LG&E). UE asserts that the purpose of the Agreement is to permit UE to make sales of capacity and energy at market based rates to LG&E pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**30. Niagara Mohawk Power Corporation**

[Docket No. ER97–4675–000]

Take notice that on September 19, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Strategic Energy Limited. This Transmission Service Agreement specifies that Strategic Energy Limited

has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Strategic Energy Limited to enter into separately scheduled transactions under which NMPC will provide transmission service for Strategic Energy Limited as the parties may mutually agree.

NMPC requests an effective date of September 12, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Strategic Energy Limited.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**31. Interstate Power Company**

[Docket No. ER97–4676–000]

Take notice that on September 19, 1997, Interstate Power Company (IPW), tendered for filing a Network Transmission Service Agreement between IPW and Wisconsin Power and Light (WPL). Under the Service Agreement, IPW will provide Network Integration Transmission Service to WPL for Hiawatha Heights.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**32. New England Power Company; The Narragansett Electric Company; Allenergy Marketing Company, L.L.C.; USGen New England, Inc.**

[Docket Nos. ER98–6–000 and EC98–1–000]

Take notice that on October 1, 1997, New England Power Company (NEP), The Narragansett Electric Company (Narragansett), AllEnergy Marketing Company, L.L.C. (AllEnergy) and USGen New England, Inc. (USGenNE), submitted for filing, pursuant to Sections 203 and 205 of the Federal Power Act, and Parts 33 and 35 of the Commission's Regulations, applications, initial rate schedules and amendments to filed rate schedules in connection with the divestiture by NEP and Narragansett of substantially all of their non-nuclear generation assets to USGenNE. Copies of the filing have been served on regulatory agencies in the States of Massachusetts, Rhode Island, and New Hampshire.

*Comment date:* December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

**33. Montenay Montgomery Limited Partnership**

[Docket No. QF88–142–006]

On September 25, 1997, Montenay Montgomery Limited Partnership (Applicant), tendered for filing a supplement to its filing of June 5, 1997, in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to the ownership of the small power production facility.

*Comment date:* October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27245 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 10228–007]**

## Cannelton Hydroelectric Project LP; Notice of Availability of Final Environmental Assessment

October 8, 1997.

A final environmental assessment (FEA) is available for public review. The FEA is for an application to amend the Cannelton Hydroelectric Project. The licensee proposes to eliminate the powerhouse by adding 240 small generating units that would be located upstream of the tainter gates within the dam's tainter gate bays and to change the approved transmission line. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Cannelton Hydroelectric Project is located on the Ohio River in Hancock County, Kentucky.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27184 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 11243–002 Alaska]**

## Whitewater Engineering Corporation; Notice of Availability of Draft Environmental Assessment

October 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 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Power Creek Project, and has prepared a Draft Environmental Assessment (DEA) for the project. The project is located near Cordova, Alaska. The DEA contains the staff's analysis of the potential environmental impacts of the project and has concluded that licensing 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 DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For further information, contact Michael Henry,

Environmental Coordinator, at (503) 326–5858 extension 224.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27185 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5909–1]**

### Toxic Chemicals; Preliminary Assessment Information Rule (PAIR); Submission of ICR No. 586 to OMB; Agency Information Collection Activities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of submission to OMB.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR) [EPA ICR No. 0586.08; OMB Control No. 2070–0054] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on November 30, 1997. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on June 23, 1997 (62 FR 33860). EPA did not receive any comments on this ICR during the comment period.

**DATES:** Additional comments may be submitted on or before November 14, 1997.

**ADDRESSES:** Send comments, referencing EPA ICR No. 0586.08 and OMB Control No. 2070–0054, to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mailcode: 2137), 401 M Street, S.W., Washington, DC 20460.

And to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

**FOR FURTHER INFORMATION OR A COPY CONTACT:** Sandy Farmer at EPA by phone on (202) 260–2740 or by e-mail: ''farmer.sandy@epamail.epa.gov,'' and refer to EPA ICR No. 0586.08 and OMB Control No. 2070–0054.

**SUPPLEMENTARY INFORMATION:**

*Review Requested:* This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

*ICR Numbers:* EPA ICR No. 0586.08; OMB Control No. 2070–0054.

*Current Expiration Date:* Current OMB approval expires on November 30, 1997.

*Title:* TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR).

*Abstract:* Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes EPA to promulgate rules under which manufacturers, importers and processors of chemical substances and mixtures must maintain records and submit reports to EPA. One of the rules EPA has promulgated under TSCA section 8(a) is the Preliminary Assessment Information Rule (PAIR). EPA uses PAIR to collect information to identify, assess and manage human health and environmental risks from chemical substances, mixtures and categories. PAIR requires chemical manufacturers and importers to complete a standardized reporting form to help evaluate the potential for adverse human health and environmental effects caused by the manufacture or importation of identified chemical substances, mixtures or categories. Chemicals identified by EPA or any other federal agency, for which a justifiable information need for production, use or exposure-related data can be satisfied by the use of the PAIR are proper subjects for TSCA section 8(a) PAIR rulemaking. In most instances the information that EPA receives from a PAIR report is sufficient to satisfy the information need in question.

Responses to the collection of information are mandatory (see 40 CFR part 712). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

*Burden Statement:* The annual public reporting burden for this collection of information is estimated to be approximately 30 hours per response for an estimated 48 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

*Respondents/Affected Entities:* Entities potentially affected by this action are those persons who manufacture or import chemical substances, mixtures or categories.

*Estimated No. of Respondents:* 48.

*Estimated Total Annual Burden on Respondents:* 3,489 hours.

*Frequency of Collection:* On occasion.

*Changes in Burden Estimates:* There is an increase of 1,543 hours in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB, from 1,946 hours currently to an estimated 3,489 hours. This increase is due to both an increase in the number of respondents and an increase in the number of forms submitted to EPA in recent years.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: October 8, 1997.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 97–27269 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5909–2]**

### OMB Review of Pesticide Information Collection Activities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled Data Acquisition for Pesticide

Registration (OMB Control No. 2070–0122, EPA No. 1503.03) which is abstracted below, has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to 5 CFR 1320.12. The ICR describes the nature of the information collection and expected cost and burden; where appropriate, it includes the actual data collection instrument. A **Federal Register** notice requesting public comment on the renewal of this ICR published on June 27, 1997 (62 FR 34744). EPA did not receive any comments.

**DATES:** Comments must be submitted on or before November 14, 1997.

**FOR FURTHER INFORMATION OR A COPY CALL:** Sandy Farmer by phone on EPA, (202) 260–2740. Please refer to OMB No. 2070–0122 or EPA ICR No. 1503.03.

**SUPPLEMENTARY INFORMATION:**

*Title:* Data Acquisition for Pesticide Registration.

*ICR No.:* OMB Control No. 2070–0122; EPA ICR No. 1503.03.

*Expiration Date:* November 30, 1997.

*Request:* This is a request for an extension of a currently approved information collection activity.

*Affected Entities:* Registrants of Pesticide Products

*Abstract:* The Environmental Protection Agency (EPA or the Agency) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Applicants for pesticide registration must provide EPA with the data needed to assess whether the registration of a pesticide would cause unreasonable adverse effects on human health or the environment, and EPA has authority under FIFRA to require registrants to provide additional data to maintain an existing registration.

When the need for additional data arises, OPP issues a Data Call-In Notice (DCI) under the authority of FIFRA section 3(c)(2)(B) to affected registrants. Data supporting pesticide inert ingredients may also be called in, based on OPP's policy statement on inert ingredients in pesticide products (52 FR 13305, April 22, 1987, and revised on November 22, 1989 (54 FR 48314). A need for additional data may arise from changes in the Agency's general data requirements, from the discovery of deficiencies in previously submitted data, or from the discovery of specific attributes of the pesticide or its ingredients.

Two types of DCIs are conducted under this information collection activity. The first type of DCI consists of data requirements for pesticide products containing selected inert ingredients. The second type of DCI addresses specific data requirements for pesticide active ingredients.

*Burden Statement:* The annual respondent burden for this collection of information is estimated to average 6,938 hours per response. This estimate includes the time needed for: planning activities, creating information, gathering information, processing, compiling, and reviewing information for accuracy, recording, disclosing or displaying the information, and storing, filing, and maintaining the data. The DCI program contains exemptions for small businesses, and does not impose any third party notification activities.

*Respondents/Affected Entities:* Parties affected by this information collection are registrants of pesticide products.

*Estimated No. of Respondents:* 30.

*Estimated Total Annual Burden on Respondents:* 208,132 hours.

*Frequency of Collection:* On occasion as needed by the Agency.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, in addition to their initial display in the **Federal Register** appear at 40 CFR part 9.

You may provide additional comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA No. 1503.03 and OMB Control No. 2070–0122 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (2137), 401 M Street, SW, Washington, D.C. 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, D.C. 20503.

Dated: October 8, 1997.

**Joseph Retzer,**

*Director, Regulatory Information Division*

[FR Doc. 97–27270 Filed 10–14–97; 8:45 am]

**BILLING CODE: 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FR–5909–8]**

## Proposed Settlement Agreement, Clean Air Act Citizen Suit

**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, as amended (Act), 42 U.S.C. 7413(g), notice is hereby given of a proposed partial consent decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency (EPA) on September 30, 1997, to address a lawsuit filed by the Sierra Club. This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), addresses, among other things, EPA's alleged failure to meet a mandatory deadline under section 112(n)(1)(B) of the Act, 42 U.S.C. 7412(n)(1)(B), which concerns a study of mercury emissions. The proposed partial consent decree provides, in part, that ''[n]o later than December 19, 1997, the Administrator shall sign a letter transmitting to Congress the study described by CAA section 112(n)(1)(B), 42 U.S.C. 7412(n)(1)(B). With five business days thereafter, EPA shall deliver to Congress such letter and study.''

For a period of thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed partial consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed partial consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the final partial consent decree will establish a deadline for specific actions under section 112(n)(1)(B) of the Act.

A copy of the proposed partial consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on September 30, 1997. Copies are also available from Phyllis J. Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7606. Written comments should be sent to Patrick S. Chang at the address above and must be submitted on or before November 14, 1997.

Dated: October 3, 1997.

**Scott C. Fulton,**

*Acting General Counsel.*

[FR Doc. 97–27258 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5909–4]**

### A Public Meeting on the Effluent Limitations Guidelines and Standards for the Metal Products and Machinery (MP&M) Industrial Category

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** The Office of Water (OW) is conducting a public meeting in order to inform all interested parties of the current status of the Metal Products and Machinery (MP&M) Effluent Guideline. The EPA intends to propose effluent limitations guidelines and standards for the MP&M industrial category in October of 2000. The meeting is intended to be a forum in which EPA can report on the status of the rulemaking and interested parties can provide information and ideas to the Agency on key technical, economic, and implementation issues.

**DATES:** The public meeting will be held on Wednesday, November 5, 1997, from 8:30 a.m. to 11:30 a.m.

**ADDRESSES:** The meeting will be held in the EPA auditorium at the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Steven Geil, Engineering and Analysis Division (4303), U.S. EPA, 401 M Street SW, Washington, DC 20460. Telephone (202) 260–9817, fax (202) 260–7185 or by e-mail at geil.steve@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA is developing proposed effluent limitations guidelines and standards for the Metal Products and Machinery Point Source Category under authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The MP&M Category includes facilities that manufacture, rebuild, and maintain finished metal parts, products, or machines.

The public meeting will include a discussion of the current status of the regulation including the combination of the two phases, the on-going data gathering efforts including sampling activities and questionnaire responses, and other general issues. The meeting will not be recorded by a reporter or transcribed for inclusion in the record for the MP&M rulemaking.

Documents relating to the topics mentioned above and a more detailed agenda will be available at the meeting. For those unable to attend the meeting, a document summary will be available following the meeting and can be obtained by an e-mail or telephone request to Steven Geil at the previously mentioned address.

**Jim Hanlon,**

*Acting Director, Office of Science and Technology.*

[FR Doc. 97–27267 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5908–9]**

### Amendment to Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; add names to the list of settling parties.

**SUMMARY:** The September 22, 1997, notice concerning the proposed settlement at the Marco of Iota Superfund Site in Iota, Louisiana (62 FR 49514) included a list of settling parties. Three federal *de micromis* parties who settled pursuant to the ''Superfund Administrative Reforms'' (at no cost to the parties) were inadvertently excluded from the list.

The excluded settlers are:

United States Department of Defense/ Department of the Air Force

United States Department of Interior/ Golden Spike National Historic Site

United States Department of Justice/ Federal Bureau of Prisons, Federal Prison Ind., Inc.

Any comments regarding the additional parties must be submitted on or before October 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713.

October 3, 1997.

**Jerry Clifford,**

*Acting Regional Administrator.*

[FR Doc. 97–27268 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5909–3]**

### South Bay Asbestos Superfund Site; Notice of Proposed Administrative Settlement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9600 *et seq.*, notice is hereby given that on September 30, 1997, the United States Environmental Protection Agency (EPA) and the United States Department of Justice (DOJ) executed two proposed Prospective Purchaser Agreements pertaining to property transactions within the South Bay Asbestos Superfund Site. The Purchasers plan to acquire parcels, totaling 24.5 acres, within the South Bay Asbestos Superfund Site, located in San Jose, California. The Parcels will be developed for office, research, light industrial, commercial service, and restaurant uses.

There are two Prospective Purchaser Agreements because the property is divided into an East and West Parcel and each parcel has different lenders. The proposed Agreements will resolve certain potential claims of the United States under section 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C 6973, against Lincoln Property Company No. 2233 (East Parcel Agreement) and Lincoln 237 Associates (West Parcel Agreement). Lincoln Property Company No. 2233 and Lincoln 237 Associates are jointly referenced as (the Purchasers). The proposed settlement will require the Purchasers to make a one-time payment of $125,000 for the East Parcel Agreement and $75,000 for the West Parcel Agreement. Payments will be made to the EPA Hazardous Substance Superfund. In addition, any disturbance of soils on the East Parcel must comply with the Soil Management Plan (SMP), attached as exhibit 3 to the East Parcel Agreement.

For thirty (30) calendar days following the date of publication of this document, EPA will rece0ive written comments relating to this proposed settlement. EPA's response to any comments received will be available for public inspection at the U.S.

Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Comments must be submitted on or before November 14, 1997.

### Availability

The proposed Prospective Purchaser Agreements are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may also be obtained from Jeannie Cervera, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference ''Lincoln Property Company No. 2233 (East Parcel) and Lincoln 237 Associates (West Parcel)—''South Bay Asbestos Superfund Site'' and ''Docket Numbers 97–14 and 97–15'' and should be addressed to Jeannie Cervera at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jeannie Cervera, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: cervera.jeannie@epamail.epa.gov; Phone (415) 744–1395.

Dated: October 6, 1997.

**Frederick Schauffler**

*Director, Superfund Division, Region IX.*

[FR Doc. 97–27271 Filed 10–14–97; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[WT Docket No. 97–199; FCC 97–322]**

### Broadband Block C Personal Communications Systems Facilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** An application of Westel Samoa, Inc. for a broadband Block C Personal Communications System authorization and six (6) applications of Westel, L.P. for broadband F Block Personal Communications System authorizations were designated for hearing. The Commission has determined that material questions of fact exist as to whether Westel Samoa, Inc., and Westel, L.P., through its principal, possess the requisite qualifications to be a Commission licensee. In addition, the Commission has ordered Anthony T. Easton to show cause why he should not be barred from holding any Commission license or participating in any future Commission auctions. The Commission has determined that because of misrepresentations made by Mr. Easton he should be so barred.

**FOR FURTHER INFORMATION CONTACT:** Joseph Weber, Enforcement and Consumer Information Division, Wireless Telecommunications Bureau (202) 418–1317.

**SUPPLEMENTARY INFORMATION:** This is a summary of Memorandum Opinion and Order, Hearing Designation Order, Notice of Opportunity for Hearing, and Order to Show Cause in WT Docket 97–199, adopted September 8, 1997, and released September 9, 1997.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC. 20036 (202) 857–3800.

### Summary of Memorandum Opinion and Order, Hearing Designation Order, Notice of Opportunity for Hearing, and Order To Show Cause

1. The Commission designated the application of Westel Samoa, Inc. and the six applications of Westel, L.P. (collectively referred to as ''Westel'') for hearing. Additionally, the Commission ordered Anthony T. Easton to show cause why he should not be barred from holding any Commission license or participating in any future Commission auction. On January 23, 1996, Mr. Easton, while acting as a bidding agent of PCS 2000, L.P. (PCS 2000), an applicant in the Commission's C Block Personal Communications Systems (PCS) auction, submitted a bid of $180,060,000 ($180 million bid) for Basic Trading Area (BTA) market B324. After the time for withdrawing bids had expired, PCS 2000 realized that it intended to bid $18,006,000 for market B324. Upon this realization, Mr. Easton telephoned the Commission and stated that the Commission's computer had caused the bidding error and that he possessed documentation to verify that fact. Subsequent to the telephone conversation, Mr. Easton caused documents to be sent to the Commission by facsimile which purported to demonstrate that the bid for market B324 was only $18 million and not $180 million.

2. The Commission learned from one of Mr. Easton's employees that the materials sent by Mr. Easton were not the original bidding documents. The employee sent copies of the original bidding information to the Commission the following day by facsimile. The original bidding documents sent by the employee bore Mr. Easton's hand-signed initials along with the date and time the document was created.

3. The same employee conveyed information to a senior employee in Mr. Easton's office that Mr. Easton was misrepresenting facts to the Commission. That employee relayed the information regarding Mr. Easton to Mr. Quentin Breen, a PCS 2000 director and principal of Westel. The first employee who witnessed Mr. Easton's actions also conveyed the information concerning Mr. Easton's deception before the Commission to Mr. Breen. At the time the information was communicated, Mr. Breen was taking part of a PCS 2000 Board of Directors meeting. However, Mr. Breen failed to reveal any of the information regarding Mr. Easton's deception to either the Board of Directors or to the Commission.

4. Pursuant to sections 309(e), 312(a), and 312(c) of the Communications Act of 1934, as amended, Westel Samoa, Inc.'s application, Westel, L.P.'s six applications, have been designated for hearing, and Anthony T. Easton has been ordered to show cause why he should not be barred from holding any attributable interest in a Commission authorization or participate in future auctions in a consolidated proceeding upon the following issues listed below:

(I) To determine, based on Anthony T. Easton's misrepresentations before and lack of candor exhibited towards the Commission, whether Mr. Easton should be barred from holding Commission authorizations and participating in future Commission auctions.

(II) (a) To determine the facts and circumstances surrounding the conduct of Quentin L. Breen in connection with PCS 2000's bids placed on January 23, 1996, in the Commission's Broadband PCS C Block auction;

(b) To determine, based on the evidence adduced above, whether Quentin L. Breen engaged in misrepresentations before and/or exhibited a lack of candor towards the Commission.

(III) To determine, based on the evidence adduced in Issue 2, whether Westel Samoa, Inc., and Westel, L.P., possess the requisite character qualifications to be granted the captioned C Block and F Block Broadband Personal Communications System applications, and accordingly, whether grant of their applications

would serve the public interest, convenience, and necessity.

5. The Commission has further placed Mr. Breen on notice that the presiding administrative law judge may find that Mr. Breen has misrepresented facts to the Commission or lacked candor before the Commission and therefore, may impose upon him a forfeiture up to the statutory maximum.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–27150 Filed 10–14–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Auction of Local Multipoint Distribution Service; Auction Notice and Filing Requirements for 986 Basic Trading Area (''BTA'') Licenses in the 28 GHz and 31 GHz Bands, Scheduled for December 10, 1997

**[DA 97–2081]**

Released September 25, 1997

### I. Introduction

*Local Multipoint Distribution Service (''LMDS'') Licenses to Be Auctioned:* The Federal Communications Commission (''FCC'' or ''Commission'') will hold an auction for 986 licenses to provide LMDS in the 28 GHz and 31 GHz bands. Two licenses will be offered in each of 493 BTAs and BTA-like areas in the United States. One license, in frequency block A, will authorize service on 1,150 megahertz of spectrum in both the 28 GHz and 31 GHz bands. The second license, frequency block B, will authorize service on 150 megahertz of spectrum in the 31 GHz band. Each frequency block encompasses the following spectrum:

Block A (1,150 megahertz): 28 GHz band: 27,500–28,350 MHz and 29,100–29,250 MHz and 31 GHz band: 31,075–31,225 MHz

Block B (150 megahertz): 31 GHz band: 31,000–31,075 MHz and 31,225–31,300 MHz

**Note:** Operations to take place in the 29,100—29,250 MHz band are governed by 47 CFR 101.103(g) and (h), 101.113(c), 101.133(d), and 101.147(t), which are new provisions designed to facilitate the sharing of this spectrum by LMDS, GSO/FSS gateways, and MSS feeder link licensees. These provisions allow only hub-to-subscribers transmissions by LMDS licensees in this band.

*Auction Date:* The auction will commence on December 10, 1997. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses.

*Auction Title:* LMDS—Auction No. 17.

*Bidding Methodology:* Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

*Pre-Auction Deadlines:*

- Auction Seminar—October 30, 1997
- Short-Form Application (FCC Form 175) November 17, 1997, 5:30 p.m. ET (Applications are not due on November 10 as previously announced on July 30, 1997)
- Upfront Payments (via wire transfer)—December 1, 1997, 6:00 p.m. ET (Payments are not due on November 24 as previously announced on July 30, 1997)
- Orders for Remote Bidding Software—December 1, 1997, 5:30 p.m. ET
- Mock Auction—December 8, 1997

*Telephone Contacts:*

- FCC National Call Center—888-CALL-FCC (888–225–5322) (For Bidder Information Packages, General Auction Information, and Seminar Registration, press option #2 at the prompt)

FCC Technical Support Hotline—202–414–1250

*Participation:* Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) by the above-listed deadline.
- Submit an upfront payment and an FCC Remittance Advice Form (FCC Form 159) by the above-listed deadline.
- Comply with all provisions outlined in this Public Notice.

*Prohibition of Collusion:* To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same BTA from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends when winning bidders submit their first down payments. The only exception is where applicants enter into a bidding agreement before filing their short-form applications, and disclose the existence of the agreement in their short-form applications. *See* 47 CFR 1.2105(c).

*Bidder Information Package:* More complete details about this auction are contained in a Bidder Information Package. The Commission will provide one copy to each company free of charge. Additional copies may be ordered at a cost of $16.00 each, including postage, payable by Visa or Master Card, or by check payable to ''Federal Communications Commission'' or ''FCC.'' To place an order, contact the FCC National Call Center at 888–CALL–FCC (888–225–5322, press option #2 at the prompt). Prospective bidders who have already contacted the FCC expressing an interest in this auction will receive a Bidder Information Package in two to three weeks, and need not call again unless they wish to order additional copies.

*Relevant Authority:* Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to LMDS, contained in title 47, part 101 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, ''Terms'') contained in the *Second Report and Order* in PP Docket No. 93–253, 59 FR 22980 (May 4, 1994); the *Second Memorandum Opinion and Order* in PP Docket No. 93–253, 59 FR 44272 (August 26, 1994); the *Erratum to the Second Memorandum Opinion and Order* in PP Docket No. 93–253 (released October 19, 1994); the First Report and Order, 61 FR 44177 (August 28, 1996), and *Fourth Notice of Proposed Rule Making* in CC Docket No. 97–297, 61 FR 39425 (July 29, 1996); the *Second Report and Order*, 62 FR 23148 (April 29, 1997), *Order on Reconsideration*, 62 FR 28373 (May 23, 1997), and *Fifth Notice of Proposed Rule Making* in CC Docket No. 96–297, 62 FR 16514 (April 7, 1997) (''*LMDS Second R&O*''); and the *Second Order on Reconsideration* in CC Docket No. 97–297, 62 FR 48787 (September 17, 1997) (collectively referred to as the ''Relevant Orders'').

The Terms contained in the Commission's rules, Relevant Orders, Public Notices and Bidder Information Package are not negotiable. Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all of the Terms before participating in the auction.

Potential bidders should also be aware that petitions for reconsideration of the Commission's actions in the *LMDS Second R&O* have been filed; that several, but not all, matters raised in petitions for reconsideration have been

addressed in the *Second Order on Reconsideration*; and that the Terms adopted therein are therefore subject to change upon reconsideration or appeal. There are also petitions for reconsideration filed against the Commission's actions in the *First Report and Order*, these petitions are pending an order on reconsideration.

The Commission may amend or supplement the information contained in our Public Notices or the Bidder Information Package at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp@ftp.fcc.gov or the FCC World Wide Web site at http://www.fcc.gov. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc., at 202–857–3800.

*Incumbent Licensees*: Although LMDS operations are permitted in the 31,000—31,075 MHz and 31,225—31,300 MHz bands, incumbent city licensees and private business users operating in these two segments are entitled to protection against harmful interference from any LMDS operation in these blocks. LMDS service providers will be entitled to interference protection from any other presently-authorized primary users in the 31,075—31,225 MHz bands.

Block A of the New York BTA is encumbered by a pre-existing licensee in the New York Primary Metropolitan Statistical Area. The incumbent licensee, CellularVision of New York, is entitled to interference protection.

*Reminder to potential Non-geostationary Mobile Satellite Service applicants/licensees*: Section 101.103(h) of the Commission's rules requires that no more than 15 days after the release of this Public Notice, NGSO-MSS feeder link earth station complex applicants/licensees planning to operate in the 29,100—29,250 MHz band pursuant to § 25.257 of the Commission's rules, file with the Commission a set of geographical coordinates consistent with section 101.103(h)(2) of the Commission's rules. This information should be directed to the attention of: Robert James, Federal Communications Commission, Wireless Telecommunications Bureau 1919 M Street, NW, Room 8102, Washington, D.C. 20554.

*Other Proceedings:* Currently pending in the U.S. Court of Appeals for the D.C. Circuit is a consolidated petition for review of the *LMDS Second R&O* and *Order on Reconsideration. See James L. Melcher v. Federal Communications Commission and United States of America*, Case No. 93–110 (and consolidated cases) dealing with two issues: eligibility restrictions for incumbent local exchange carriers (''ILECs'') to own LMDS licenses ''in-region,'' and the denial of petitions for reconsideration of the 971 waiver applications for service in the 28 GHz band which were previously dismissed. Also pending before the Commission are several petitions for reconsideration of the *LMDS Second R&O* and *Order on Reconsideration* dealing with the issues of: the eligibility restriction on ILECs; the allocation of the 31 GHz band to LMDS; the reinstatement of dismissed applications in the 31 GHz band; the application of a new frequency tolerance to the 31 GHz band; and further reconsideration of the 971 waiver applications for service in the 28 GHz band which were previously dismissed; as well as petitions for clarification of certain technical and service rules. A memorandum opinion and order on reconsideration responding to these petitions will be released in the near future.

*Bidder Alerts:* All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the LMDS auction to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the FTC at 202–326–2222 and from the SEC at 202–942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at 800–876–7060. Consumers who have concerns about specific LMDS proposals may also call the FCC National Call Center at 888–CALL–FCC (888–225–5322).

## II. Bidder Eligibility and Small Business Provisions

### *A. General Eligibility Criteria*

As described above, this auction offers two licenses: one license for 1,150 megahertz of spectrum in the 28 GHz and 31 GHz bands; and one license for 150 megahertz of spectrum in the 31 GHz band; in each of 493 BTA and BTA-like areas, for a total of 986 licenses. General eligibility to provide LMDS service, subject to certain restrictions outlined below, is afforded to entities which are not precluded under 47 CFR 101.7, 101.1001, and 101.1003.

#### *(1) Eligibility Restrictions*

(a) 1,150 megahertz licenses.

ILECs and cable television companies are subject to certain restrictions on their eligibility to own an attributable interest in the 1,150 megahertz LMDS

license in their authorized or franchised service areas (''in-region''). An incumbent is defined as ''in-region'' if its authorized service area represents 10 percent or more of the population of the BTA. A 20 percent or greater ownership level constitutes an attributable interest in a license. ILECs and cable companies are permitted to participate fully in the auction of the 1,150 megahertz LMDS licenses, but are required to divest any overlapping interests within 90 days if they win a license at the auction. The eligibility restrictions terminate on the third anniversary of the effective date of the LMDS rules. These restrictions may be extended beyond the three-year period, if, upon a review at the end of this period, the Commission determines that sufficient competition has not developed. The Commission may waive the restriction in individual cases upon a showing of good cause.

(b) 150 megahertz licenses.

All entities that meet the Commission's general eligibility criteria, including ILECs and cable television companies, are eligible to own attributable interests in the 150 megahertz license in any BTA.

(2) Determination of Revenues

For purposes of determining which entities qualify as very small businesses, small businesses, and entrepreneurs, the Commission will attribute to the applicant the gross revenues of all of its controlling principals and affiliates. For purpose of this auction, the Commission will not impose specific equity requirements on controlling principals. However, in order to qualify as a very small business, small business, or entrepreneur an applicant's qualifying principals must maintain control of the applicant. The term ''control'' includes both *de facto* and *de jure* control of the applicant. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

(3) Application Showing

Applicants should note that they will be required to file supporting documentation to establish that they satisfy the eligibility requirements for this auction. *See* 47 CFR 1.2105 and 101.1109.

*B. Bidding Credits*

Qualifying LMDS applicants are eligible for bidding credits. The size of an LMDS bidding credit depends on the annual gross revenues of the bidder and its controlling principles and affiliates, as averaged over the preceding three years:

- A bidder with gross annual revenues of not more than $15 million receives a 45 percent discount on its winning bids for LMDS licenses;
- A bidder with gross annual revenues of more than $15 million but not more than $40 million receives a 35 percent discount on its winning bids for LMDS licenses; and
- A bidder with gross annual revenues of more than $40 million but not more than $75 million receives a 25 percent discount on its winning bids for LMDS licenses.

Bidding credits are not cumulative: applicants that qualify receive either the 25 percent, the 35 percent, or the 45 percent bidding credit, but not all. The definitions of very small business, small business, and entrepreneur (including calculation of gross annual revenue) are set forth in 47 CFR 101.1112.

LMDS bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their BTA licenses to an entity not qualifying for the same levels of bidding credits. *See* 47 CFR 101.1107(e).

**III. Pre-Auction Procedures**

*A. Short-Form Application (FCC Form 175)—Due November 17, 1997*

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on November 17, 1997. Late applications will not be accepted.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part 3.C, *infra.*

(1) Filing Options

Auction applicants are strongly encouraged to file their applications electronically in order to take full advantage of the greater efficiencies and convenience of electronic filing, bidding and access to bidding data. For example, electronic filing enables the applicant to: (a) receive interactive feedback while completing the application; and (b) receive immediate acknowledgement that the FCC Form 175 has been submitted for filing. In addition, only those applicants who file electronically will have the option of bidding electronically. However, manual filing (via hard copy) is also permitted. Please note that manual filers will not be permitted to bid electronically and *must bid telephonically*, unless the FCC Form 175 is amended electronically prior to the resubmission date for incomplete or deficient applications. Applicants who file electronically may make amendments to their applications until the filing deadline. The following is a brief description of each filing method.

(a) Electronic Filing.

Applicants wishing to file electronically may generally do so on a 24-hour basis beginning October 27, 1997. All the information required to file the FCC Form 175 electronically (*i.e.*, software and help files) will be available over both the Internet and the FCC's Bulletin Board System (''BBS'').

(b) Manual Filing.

Auction applicants will be permitted to file their FCC Form 175 applications in hard copy. When any manually filed FCC Form 175 and 175–S exceeds five pages in length, the FCC additionally requires that all attachments be submitted on a 3.5-inch diskette, or the entire application be filed in a microfiche version. Manual filers must use the September 1997 version of FCC Form 175 and the October 1995 edition of the 175–S (if applicable). Earlier versions of the FCC Form 175 will not be accepted for filing. Copies of FCC Forms 175 and 175–S can be obtained by calling 202–418–FORM.

Manual applications may be submitted by hand delivery (including private ''overnight'' courier), or by U.S. mail (certified mail with return receipt recommended), addressed to: FCC Form 175 Filing, Auction No. 17, Federal Communications Commission, Auctions & Industry Analysis Division, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

**Note:** Manual applications delivered to any other locations will not be accepted.

(2) Completion of the FCC Form 175

Applicants should carefully review 47 CFR 1.2105 and 101.1104, and must complete all items on the FCC Form 175 (and 175–S, if applicable).

Failure to sign a manually filed FCC Form 175 or failure to submit the required ownership information (for both electronic and manual filers) will result in dismissal of the application and loss of the ability to participate in the auction. Only original signatures

will be accepted for manually filed applications.

(3) Electronic Review of FCC Form 175

The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. In other words, applicants who file electronically may review their own completed FCC Forms 175. Applicants also have access to view other applicants' completed FCC Forms 175, after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. There is a fee of $2.30 per minute for accessing this system.

*B. Application Processing and Minor Corrections*

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications that have minor defects that may be corrected, and the deadline for filing such corrected applications.

As described more fully in the Commission's rules, after the November 17, 1997, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official or change control of the applicant). *See* 47 CFR 1.2105.

*C. Upfront Payments—Due December 1, 1997*

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice (FCC Form 159). Manual filers must use the July 1997 version of FCC Form 159. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, Pennsylvania, by 6:00 p.m. ET on December 1, 1997.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer. No other form of payment will be accepted.
- Upfront payments for Auction No. 17 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the December 1, 1997 deadline will result in dismissal of the application and disqualification from participation in the auction.

(1) Wire Transfers

For this auction, the FCC requires applicants to make their upfront payments by wire transfer, which experience has shown provides the greatest reliability and efficiency. Wire transfer payments must be received by 6:00 p.m. ET on December 1, 1997. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh

BNF: FCC/AC—9100180

OBI Field: (Skip one space between each information item)
''AUCTIONPAY''

TAXPAYER IDENTIFICATION NO. (same as FCC Form 175, block 7)

PAYMENT TYPE CODE (enter ''AWLU'')

FCC CODE (same as FCC Form 159, Block 23A: ''17'')

PAYER NAME (same as FCC Form 175, Block 1)

LOCKBOX NO. 358420

**Note:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

Applicants must fax a completed FCC Form 159 to Mellon Bank at 412–236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 17.''

(2) FCC Form 159

Each upfront payment must be accompanied by a completed FCC Remittance Advice (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 will be included in the Bidder Information Package.

(3) Amount of Upfront Payment

The amount of the upfront payment required to bid on a particular license(s) in Auction No. 17 has been calculated in three tiers, based on the population (''pop'') figures for the BTA(s), and adjusted to take into account the spectrum bandwidth that is being licensed in frequency block A and in frequency block B.

The formula utilized to calculate upfront payments is as follows:

FREQUENCY BLOCK A

| BTA population | × | Per pop multiple* | × | Frequency block B* |
|---|---|---|---|---|
| Over 1,000,000 | × | $0.90 | × | 10% |
| 100,000–1,000,000 | × | $0.60 | × | 10% |
| Under 100,000 | × | $0.30 | × | 10% |

*All upfront payments are rounded up to the nearest dollar. A minimum upfront payment amount has been set at $2,500 per license.

Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define the bidder's maximum bidding eligibility. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied. Rather, the total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. In order to be able to place a bid on a license, in addition to having specified that license on FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on FCC Form 175, or else the

applicant will not be eligible to participate in the auction.

In calculating the upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units.

**Note:** An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment. As explained in Parts 4.A(2) and 4.A(4), *infra,* bidders will be required to remain active in each round of the auction on a specified percentage of the bidding units reflected in their upfront payments in order to retain their current eligibility.

(4) Applicant's Wire Transfer Information for Purposes of Refunds

Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the Commission plans to use wire transfers for all Auction No. 17 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Regina Dorsey or Linwood Jenkins, at 202–418–2843. (Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part 5.D, *infra.*

*D. Auction Registration*

Approximately five business days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and who have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

Applicants who do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant who has not received both mailings by noon on Monday, December 8, 1997 should contact the FCC National Call Center at 888–CALL–FCC (888–225–5322, press option #2 at the prompt). Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 2 Massachusetts Avenue, N.E., Washington, D.C. 20002. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

*E. Remote Electronic Bidding Software*

Qualified bidders who file or amend the FCC Form 175 electronically are allowed to bid electronically, but must purchase remote electronic bidding software for $175.00, including shipping and handling, by December 1, 1997. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 17.) Bidders who order remote bidding software by the ordering deadline will receive it with the registration mailings. A software order form will appear in a subsequent public notice.

*F. Auction Seminar*

On October 30, 1997 the FCC will sponsor a seminar for the LMDS auction. This seminar will be held at the Renaissance Hotel, 999 9th Street, N.W., Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the LMDS service and auction rules. Additionally, there will be an opportunity for interested parties to display equipment at this event. If interested, please contact the FCC at 888–CALL–FCC (888–225–5322, press option #2 at the prompt).

Please note that a maximum of two representatives from each company may attend, first-come first-served, on a reservation basis until room capacity is filled. To register, complete the registration form included in the Bidder Information Package.

*G. Mock Auction*

All applicants whose FCC Forms 175 have been accepted for filing will be eligible to participate in a mock auction beginning December 8, 1997. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Due to different bidding procedures in the LMDS auction from previous Commission auctions, participation by all bidders is strongly recommended. Details will be announced by public notice.

**IV. Auction Event**

The first round of the auction will begin on December 10, 1997.

*A. Auction Structure*

(1) Simultaneous Multiple Round Auction

The 986 LMDS BTAs will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction.

(2) Maximum Eligibility and Activity Rules

As explained in Part 3.C(3), *supra,* the amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a percentage of their maximum eligibility during each round of the auction. Details of the specific percentages for each stage are set forth under *Auction Stages* in Part 4.A(4), *infra.* A bidder that does not satisfy the activity rule will either lose bidding eligibility or use an activity rule waiver, as explained by *Activity Rule Waivers and Reducing Eligibility* in Part 4.A(3), *infra.*

A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding period and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see Minimum Acceptable Bids* in Part 4.B(2), *infra*). A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses, as set forth under *Auction Stages* in Parts 4.A(4) and 4.A(5), *infra.*

(3) Activity Rule Waivers and Reducing Eligibility

Each bidder will be provided five activity rule waivers that may be used

in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

A bidder with insufficient activity who wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in *Auction Stages*, Part 4.A(4), *infra*. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

(4) Auction Stages

The auction is composed of three stages, which are each defined by an increasing activity rule. Below are the proposed activity levels for each stage of the auction. The FCC reserves the discretion to alter the activity percentages before and during the auction.

*Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 60 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-thirds (5/3).

*Stage Two:* In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 80 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

*Stage Three:* In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths (50/49).

**Caution:** Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders who have standing high bids and do not plan to submit new bids. In past auctions, some bidders inadvertently lost bidding eligibility or used an activity rule waiver because they did not reverify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

(5) Stage Transitions

The auction will start in Stage One. Under the FCC's general guidelines it will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the FCC retains the discretion to accelerate the auction by announcement. This determination will be based on a variety of measures of bidder activity including, but not limited to, the auction activity level, the percentages of licenses (measured in terms of bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

(6) Auction Stopping Rules

Barring extraordinary circumstances, bidding will remain open on all licenses until bidding stops on every license. Thus, the auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid.

The FCC retains the discretion, however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

Further, in its discretion, the FCC reserves the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

(7) Auction Delay, Suspension, or Cancellation

By public notice or by announcement during the auction, the FCC may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the FCC, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the FCC to delay or suspend the auction.

*B. Bidding Procedures*

(1) Round Structure

The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and

will be included in the registration mailings. The round structure for each bidding round contains a single bidding period followed by the release of the round results.

The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the performance and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(2) Minimum Opening Bid/Reserve Prices

When FCC licenses are subject to auction (*i.e.,* because they are mutually exclusive) the recently enacted Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price is required or minimum opening bid established, unless it determines that such an assessment is not in the public interest. Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997); 47 U.S.C. § 309(j)(4)(F). In light of the Balanced Budget Act, the Commission will release a subsequent Public Notice which will seek comment on a proposal that a reserve price and/or minimum opening bid be established for the LMDS auction.

(3) Minimum Acceptable Bids

Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. The Commission will use its exponential smoothing methodology to calculate minimum bid increments. The exponential smoothing formula calculates the bid increment based on a weighted average of the activity received on each license in the current and all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. A detailed description of the exponential smoothing bid increment will be included in the forthcoming Bidder Information Package.

(4) High Bids

Each bid will be date-and time-stamped when it is entered into the computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid. The bidding software allows bidders to make multiple submissions in a round. Each bid is date-and time-stamped according to when it was submitted. Thus, bids submitted by a bidder earlier in a round will have an earlier date-and time-stamp than bids submitted later in a round.

(5) Bidding

During a bidding period, a bidder may submit bids for as many licenses as it is eligible, as well as withdraw high bids from previous bidding periods, remove bids placed in the same bidding period, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding period, and will not have a separate period to withdraw bids. If a bidder enters multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date and time stamp of that bid reflect the latest time the bid was entered.

A bidder's maximum eligibility in the first round of the auction is determined by: (a) the licenses applied for on FCC Form 175; and (b) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

The bidding software requires each bidder to login to the FCC Auction System during the bidding period using the FCC Account Number, Bidder Identification Number, and confidential security codes provided in the registration materials. Bidders are encouraged to download and print bid confirmations after they submit their bids.

In Auction No. 17, the screen will display a ''Click on Check Box to Bid'' column that provides a check box for each Minimum Bid Accepted amount in place of the bid entry field. To place a bid at the minimum acceptable bid amount for a license, a bidder must click the appropriate box to put a check mark in it and then press submit to enter the bid into the auction system. Bidders may not type in a bid for any license.

Once the click box is checked, the Bid Submission screen updates the Group Total (total dollars bid), Bid-Units, and Activity amounts, as if a bid amount had been typed. However, by using the check boxes, there is no risk of mistyping bids. Other auction screens are unchanged, as are the reports.

(6) Bid Withdrawal and Bid Removal

(a) Procedures.

Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively 'unsubmit' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Note that removing a bid will affect a bidder's activity for the round in which it is removed.

Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 101.1103(f), 1.2104(g), and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in *Bidding*, Part 4.B(4), *supra.*

The FCC will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 101.1103(f), 1.2104(g), and 1.2109. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a ''place holder'' on the license until a new acceptable bid is submitted on that license.

(b) Calculation.

Generally, a bidder who withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license. *See* 47 CFR 101.1103(f), 1.2104(g), and 1.2109. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

(7) Round Results.

The bids placed during a bidding period are not published until the conclusion of that bidding period. After a bidding period closes, the FCC will

compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

Reports reflecting bidders' identities and bidder identification numbers for Auction No. 17 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

(8) Auction Announcements

The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

(9) Other Matters

As noted in Part 3.B, *supra,* after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers should make these changes on-line, and submit a letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554 (and mail a separate copy to Matthew Moses, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to the FCC Auctions and Industry Analysis Division at 202–418–0660.

**V. Post-Auction Procedures**

*A. Down Payments and Withdrawn Bid Payments*

After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

Within five business days after release of this auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 101.1102(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in Part 4.B(5), *supra.* (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

*B. Long-Form Application*

Within ten business days after release of the auction closing notice, winning bidders must submit a properly completed long-form application and required exhibits for each LMDS license won through the auction. Winning very small businesses, small businesses, and entrepreneurs must include an exhibit demonstrating their eligibility for bidding credits. *See* 47 CFR 101.1109(b). Further filing instructions will be provided to auction winners at the close of the auction.

*C. Default and Disqualification*

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license to existing or new applicants or offer it to the next highest bidders (in descending order) at their final bids. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

*D. Refund of Remaining Upfront Payment Balance*

All applicants who submitted upfront payments but were not winning bidders for any LMDS license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

Bidders who drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders who reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders who have exhausted all their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number (''TIN''), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 1919 M Street, N.W., Room 452, Washington, D.C. 20554.

Bidders can also fax their request to the Billings and Collections Branch at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

**Note:** Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Regina Dorsey or Linwood Jenkins at 202–418–1995.

*Media Contact:* Audrey Spivack at (202) 418–0654.

*Public Safety and Private Wireless Division:* Susan Magnotti or Bob James at (202) 418–0680; Auctions and Industry Analysis Division: Mark Bollinger, Matthew Moses, or Louis Sigalos at (202) 418–0660.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–27232 Filed 10–14–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Deletion of Agenda Items From October 9th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the October 9, 1997, Open Meeting and previously listed in the Commission's Notice of October 2, 1997.

*Item No., Bureau, Subject*

1—Wireless Telecommunications—Title: Service Rules for the 746–806 MHz Band, and Revisions to Part 27 of the Commission's Rules and The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010 -- Establishment of Rules and Requirements for Priority Access Service (WT Docket No. 96–86). Summary: The Commission will consider action concerning service rules for the 746-806 MHz band and

on rules to permit the provision of priority access service.

2—Common Carrier—Title: Administration of the North American Numbering Plan (CC Docket No. 92–237) and Toll Free Service Access Codes (CC Docket No. 95–155). Summary: The Commission will consider action concerning the administrator of the North American Numbering Plan, the Billing and Collection Agent for telecommunications numbering administration, and administration of the database containing toll free numbers.

Dated October 9, 1997.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–27413 Filed 10–10–97; 12:06 pm]

BILLING CODE 6712–01–F

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Notice of Adjustment of Disaster Grant Amounts

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) gives notice that the maximum amounts for Individual and Family Grants and grants to State and local governments and private nonprofit facilities are adjusted for disasters declared on or after October 1, 1997.

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

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

**SUPPLEMENTARY INFORMATION:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, prescribes that grants made under Section 411, Individual and Family Grant Program, and grants made under Section 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under Sec. 411 of the Act, with respect to any single disaster, is increased to $13,400 for all disasters declared on or after October 1, 1997.

Notice is also hereby given that the amount of any grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, is increased to $47,100 for all disasters declared on or after October 1, 1997.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 2.2 percent for the prior 12-month period. The information was published by the Department of Labor during September 1997. (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**James L. Witt,**

*Director.*

[FR Doc. 97–27255 Filed 10–14–97; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Discontinuance

#### Background

Notice is hereby given of the discontinuance of an information collection by the Board of Governors of the Federal Reserve System (Board).

**FOR FURTHER INFORMATION CONTACT:**

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Discontinuation of the following report:

*1. Report title*: Monthly Survey of Selected Deposits and Annual Supplement to the Monthly Survey of Selected Deposits

*Agency form number*: FR 2042 and FR 2042a

*OMB Control number*: 7100-0066

*Effective Date*: immediately; data as-of September 30, 1997 will be the last collected

*Frequency*: monthly (FR 2042) and annual (FR 2042a)

*Reporters*: commercial banks and savings banks insured by the Bank Insurance Fund (BIF)

*Annual reporting hours*: 6,300 (FR 2042) and 525 (FR 2042a)

*Estimated average hours per response*: 1.0

*Number of respondents*: 525

Small businesses are affected.

*General description of report*: This information collection has been voluntary (12 U.S.C. § 248(a)(2)). For the FR 2042, the individual respondent data on amounts outstanding and on interest expense have been given confidential treatment (5 U.S.C. § 552(b)(4)). Individual respondent information on interest rates paid on deposits has been made available to the public on request. Data from the FR 2042a have not been accorded confidential status.

*Abstract*: These reports have collected information on the structure and pricing of deposit accounts from a stratified sample of 525 commercial and BIF-insured savings banks. Results of the monthly survey have been published once a month in a supplementary table included in the Board's H.6 statistical release, *Money Stock, Liquid Assets, and Debt Measures*.

The Federal Reserve has used FR 2042 and FR 2042a data in a number of ways, including construction and interpretation of the monetary aggregates, measuring elasticities in money demand equations, and assessing the changing behavior of banks in pricing deposit accounts. However, innovations in retail products and pricing have reduced the accuracy and usefulness of the data collected in the underlying survey. Discontinuing the survey will produce cost savings for the Federal Reserve and reduce the reporting burden on depository institutions. Data on retail deposit rates can be obtained from private sector vendors.

The public's use of FR 2042 data appears to be minimal.

Board of Governors of the Federal Reserve System, October 8, 1997

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–27277 Filed 10–14–97; 8:45 am]

Billing Code 6210–01–F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 28, 1997.

**A. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

*1. Roscoe Community Bankshares, Inc.*, Roscoe, South Dakota; to become a bank holding company by directly and indirectly acquiring 100 percent of of the voting shares of Roscoe Financial Services, Inc., Roscoe, South Dakota, and thereby indirectly acquire First State Bank of Roscoe, Roscoe, South Dakota.

Board of Governors of the Federal Reserve System, October 8, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–27178 Filed 10–14–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:00 a.m., Monday, October 20, 1997.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Status Report of the Committee on the Federal Reserve in the Payments Mechanism (Alternative Roles for the Federal Reserve in the Retail Payments System).

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 10, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–27506 Filed 10–10–97; 3:09 pm]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

**[File No. 952 3200; et al.]**

### Suntrup Ford, Inc.; Analysis to Aid Public Comment, et al.

In the matter of:

File No. 952 3201
Suntrup Buick-Pontiac-GMC Truck, Inc.; Thomas Suntrup; Analysis to Aid Public Comment

File No. 952 3204
Lou Fusz Automotive Network, Inc.; Louis J. Fusz, Jr.; Analysis to Aid Public Comment

File No. 952 3207
Beuckman Ford, Inc.; Fred J. Beuckman, III; Analysis to Aid Public Comment

File No. 952 3202
Frank Bommarito Oldsmobile, Inc.; Frank J. Bommarito; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreements.

**SUMMARY:** The consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

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

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** David Medine, Federal Trade Commission, S–4429, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580 (202) 326–3224.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the accompanying complaints. Electronic copies of the full text of the consent agreement packages can be obtained from the Commission Actions section of the FTC Home Page (for October 7, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' Paper copies can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from respondents Lou Fusz Automotive Network, Inc. and Louis J. Fusz, Jr. (''respondents Lou Fusz''); Frank Bommarito Oldsmobile, Inc. and Frank J. Bommarito (''respondents Frank Bommarito''); Suntrup Ford, Inc., Suntrup Buick-Pontiac-GMC Truck, Inc., and Thomas Suntrup (''respondents Suntrup''); and Beuckman Ford, Inc. and Fred J. Beuckman, III (''respondents Beuckman''). [1] The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the

[1] These entities and persons are collectively referred to as ''respondents.''

agreement or make final the agreements' proposed orders.

The complaints allege that each of the respondents' automobile lease advertisements have violated the Federal Trade Commission Act (''FTC Act''), the Consumer Leasing Act (''CLA''), and Regulation M. The complaints also allege that respondents' credit advertisements have violated the Truth in Lending Act (''TILA'') and Regulation Z, and, in the case of respondents Frank Bommarito, the FTC Act. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board (''Board'') to promulgate regulations implementing such statutes—Regulations M and Z respectively. *See* 15 U.S.C. §§ 1601–1667e; 12 C.F.R Part 213; 12 C.F.R Part 226.[2]

The complaints against respondents Lou Fusz, Bommarito, and Suntrup allege that their lease advertisements have misrepresented the true amounts consumers owe at lease inception. The complaints allege that these companies' ads represented, based on prominent statements of ''0 Down,'' ''No Money Down,'' and ''No Payment til April/March'' respectively, that consumers can lease the advertised vehicles without incurring monetary obligations at lease inception. This representation is false, according to the complaints, because consumers must pay substantial fees, such as a significant downpayment, a security deposit, first month's payment, and/or other fees to lease the advertised vehicles. The complaints also allege that *all* respondents (including respondents Beuckman), based on their prominent statements about inception fees and/or prominent statements about a low monthly payment, have failed to disclose adequately significant inception fees in their advertisements. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) and the FTC Act.

The complaints further allege that all respondents' lease advertisement have violated the CLA and Regulation M. The complaints allege that respondents' ads state that amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease (''triggering'' terms under these laws), but fail to properly state all of the ''triggered'' terms, as applicable and as follows: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the number, amount, due dates or period of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term. These practices, according to the complaints, violate the advertising requirements of the CLA and Regulation M.

These aforementioned violations cite the version of both the CLA and Regulation M in effect at the time the ads ran. Respondents' alleged practices of failing to properly disclose inception fees would also violate the revised CLA, the 1996 revisions to Regulation M, and the 1997 revisions to Regulation M, all of which are currently permissibly effective and will be mandatorily effective on October 1, 1997. As described below, the relief in the proposed consent orders enjoin respondents from violating the existing CLA and Regulation M but also provide respondents the option of complying with the revised laws to satisfy this requirement.

The complaint against respondents Lou Fusz also alleges that their lease advertisements have represented that consumers can lease the advertised vehicles at advertised terms, including but not limited to the monthly payment amount and the amount stated as ''down.'' This representation is false, according to the complaint, because respondents have not offered the advertised vehicles at such terms. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act. These practices also violate Section 213.5(a) of Regulation M, 12 C.F.R. § 213.5(a), according to the complaint, which requires that advertisers make advertised terms ''usually and customarily'' available to consumers.

The complaint against respondents Lou Fusz also alleges that their lease advertisements promoting a ''one payment plan have represented that consumers can lease the advertised vehicles by making equal monthly payments for a specified term. This representation is false, according to the complaint, because the ''one payment'' plan requires consumers to make all payments owed under the lease agreement at lease signing. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaint against respondents Beuckman also alleges that their lease advertisements have represented that consumers can purchase the advertised vehicles by financing the vehicles through credit at the advertised monthly payment and term. According to the complaint, respondents Beuckman failed to disclose adequately that the transaction advertised is a lease. Specifically, the complaint alleges that respondents Beuckman failed to disclose that the term ''RCL'' is an abbreviation for ''Red Carpet Lease'' or to otherwise disclose that the advertised monthly payment and term are components of a lease offer. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaints against all of the respondents allege that their credit advertisements have violated the TILA and Regulation Z. The complaints allege that respondents' ads state the amount of percentage of any downpayment, the number of payments or period of repayment, and/or the amount of any payment, but fail to properly state the following required terms: the amount or percentage of the downpayment, the terms of repayment, and/or the annual percentage rate, using that term or the abbreviation ''APR,'' in violation of the advertising requirements the TILA and Regulation Z. The complaint against respondents Suntrup also alleges that their credit advertisements have violated the TILA and Regulation Z by stating a rate of finance charge without stating that rate as an ''annual percentage rate,'' using that term or the abbreviation ''APR,'' in violation of the TILA and Regulation Z.

[2] On September 18, 1996, the Board issued revisions to Regulation M. 61 FR 52,246 (Oct. 7, 1996) (''1996 revisions to Regulation M''). The advertising requirements of the October 1996 revisions are to be codified at Section 213.7 of Regulation M, 12 C.F.R 213.7. Subsequently, on September 30, 1996, Congress passed revisions to the CLA Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104–208, 110 Stat. 3009, 3009–473 (Sept. 30, 1996) (''revised CLA''). On April 1, 1997, the Board implemented these statutory changes in another rulemaking. 62 FR 15,346 (Apr. 1, 1997) (''1997 revisions to Regulation M''). These changes are also to be codified at Section 213.7 of Regulation M, 12 C.F.R 213.7. On April 4, 1997, the Board adopted a final revised Official Staff Commentary to Regulation M, 62 FR 16,053 (Apr. 4, 1997) (''Commentary''). The amendments to the CLA and the revisions to Regulation M and the Commentary are optionally effective immediately and become mandatorily effective on October 1, 1997.

The complaint against respondents Frank Bommarito also alleges that their credit advertisements have represented that consumers can purchase the advertised vehicles at the terms prominently stated in the ad, such as the monthly payment, annual percentage rate (''APR''), and amount stated as ''down.'' This representation is false, according to the compliant, because consumers must also pay a final balloon payment of several thousand dollars to purchase the advertised vehicles. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, the proposed orders prohibit respondents, in any lease advertisement, from misrepresenting the costs of leasing a vehicle, including but not limited to the total amount due at lease inception. The proposed orders also prohibit respondents, in any lease advertisement, from stating any amount due at lease inception or that no such amount is required, not including a statement of the periodic payment, unless the advertisement also states with ''equal prominence'' the total amount due at lease inception. This ''prominence'' requirement for lease inception fees also is found in the Board's 1996 and 1997 revisions to Regulation M.

The proposed orders also require respondents, in any advertisement that states the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, to also state clearly and conspicuously all of the terms required by Regulation M, as applicable and as follows: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required; the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessees has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term if the lessee has such liability. For all lease advertisements, the proposed orders permit respondents to comply with this provision by utilizing applicable provisions of the revised CLA and the 1996 and 1997 revisions to Regulation M. The orders set out for each media which provisions of such revised laws are applicable.

The proposed order for respondents Lou Fusz also prohibits these respondents from stating specific lease terms unless respondents usually and customarily lease or will lease a vehicle at those terms. This proposed order also prohibits respondents Lou Fusz from misrepresenting the type of transaction advertised, including but not limited to the fact that the offer is for a one payment lease.

The proposed order for respondents Beuckman also prohibits these respondents from stating the term ''RCL'' without disclosing clearly and conspicuously that such term refers to a lease transaction.

With regard to respondents' credit advertisements, the proposed orders require that any advertisement that states the amount or percentage of any downpayment, the number of payments, the amount of any payment, or the amount of any finance charge must also state clearly and conspicuously all of the terms required by the TILA and Regulation Z, as applicable and as follows: the amount or percentage of the downpayment; the terms of repayment; and the annual percentage rate, using that term or the abbreviation ''APR.'' If the APR may be increased after consummation of the credit transaction, that fact must also be disclosed. The proposed order for respondents Suntrup also prohibits these respondents from stating a rate of finance charge without stating the rate as an ''annual percentage rate'' or the abbreviation ''APR.''

The proposed order for respondents Frank Bommarito prohibits these respondents, in any credit advertisement, from misrepresenting the terms of financing a vehicle, including but not limited to the amount of any balloon payment. This proposed order also prohibits respondents Frank Bommarito from stating the amount of any payment or the amount or percentage of any downpayment or amount ''down'' if any advertisement unless these respondents also state the amount of any final balloon payment prominently and in close proximity to the most prominent of the above statements.

The proposed orders also prohibit all respondents from failing to comply in any other respect with the CLA and Regulation M and the TILA and Regulation Z. The proposed order permits respondents to comply with other requirements of existing Regulation M, 12 C.F.R. § 213 by utilizing the 1996 and 1997 revisions to Regulation M, as amended.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 97–27228 Filed 10–14–97; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

**[File Nos. 9723141 and 9523098]**

### Volkswagen of America, Inc., and Toyota Motor Sales, U.S.A., Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

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

**ADDRESSES:** Comment should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** David Medine, Federal Trade Commission, S–4429, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3224.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the

accompanying complaints. Electronic copies of the full text of the consent agreement packages can be obtained from the Commission Actions section of the FTC Home Page (for October 7, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' Paper copies can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Orders To Aid Public Comment**

The Federal Trade Commission has accepted separate agreements, subject to final approval, to proposed consent orders from Toyota Motor Sales, U.S.A., Inc. (''Toyota'') and Volkswagen of America, Inc. (''Volkswagen'') (collectively referred to as ''respondents).

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The complaints allege that the respondents' automobile lease advertisements violate the Federal Trade Commission Act (''FTC Act''), the Consumer Leasing Act (''CLA''), and Regulation M. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease advertising under the CLA and directed the Federal Reserve Board (''Board'') to promulgate regulations implementing this statutue—Regulation M. *See* 15 U.S.C. 1667–1667e; 12 CFR part 213. On September 30, 1996, Congress passed revisions to the CLA that became optionally effective immediately and that have been implemented through the Board's recent revisions to Regulation M. *See* Title II, section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. 104–208, 110 Stat. 3009, 3009–473 (Sept. 30, 1996) (''revised CLA''); 61 FR 52,246 (October 7, 1996), 62 FR 15,364 (April 1, 1997), and 62 FR 16,053 (April 4, 1997) (together ''revised Regulation M'') (to be codified at 12 CFR 213), as amended.

The complaints against Toyota and Volkswagen allege that respondents' automobile lease advertisements represent that a particular amount stated as ''down'' or ''due at lease signing'' is the total amount consumers must pay at the initiation of a lease agreement to lease the advertised vehicles. This representation is false, according to the complaints, because consumers must pay additional fees beyond the amount stated as ''down'' or ''due at lease signing,'' such as a capitalized cost reduction, security deposit, first month's payment and/or an acquisition fee, to lease the advertised vehicles. The complaints also allege that respondents fail to disclose adequately lease inception fees, often highlighting only a low monthly payment, in their advertisements. These practices, according to the complaints, constitute deceptive acts or practices in violation of section 5(a) of the FTC Act.

The complaints further allege that respondents' lease advertisements fail to disclose the terms of the offered lease in a clear and conspicuous manner, as required by the CLA and Regulation M. According to the complaints, respondents' television lease disclosures are not clear and conspicuous because they appear on the screen in small type, against a background of similar shade, for a very short duration, and/or over a moving background. The Toyota complaint also alleges that Toyota's fine print disclosures of lease terms in direct mail advertisements are not clear and conspicuous. The complaints, therefore, allege that respondents' failure to disclose lease terms in a clear and conspicuous manner violates the CLA and Regulation M. These alleged practices would also violate the advertising disclosure requirements of the revised CLA and the revised Regulation M.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, subparagraph I.A. of the proposed orders prohibits respondents, in any lease advertisement, from misrepresenting the total amount due at lease signing or delivery, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required). Subparagraph I.B. of the proposed orders also prohibits respondents, in any lease advertisement, from making any reference to any charge that is part of the total amount due at lease signing or delivery or that no such amount is due, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease inception. The ''prominence'' requirement prohibits the companies from running deceptive advertisements that highlight low amounts ''down,'' with inadequate disclosures of actual total inception fees. This ''prominence'' requirement for lease inception fees also is found in the revised Regulation M recently adopted by the Board.

Moreover, subparagraph I.C. of the proposed orders prohibits respondents, in any lease advertisement, from stating the amount of any payment or that any or no initial payment is required at consummation of the lease, unless the ad also states: (1) That the transaction advertised is a lease; (2) the total amount due at lease signing or delivery; (3) whether or not a security deposit is required; (4) the number, amount, and timing of scheduled payments; and (5) that an extra charge may be imposed at the end of the lease term where the liability of the consumer at lease end is based on the anticipated residual value of the vehicle. The information enumerated above must be displayed in the lease advertisement in a clear and conspicuous manner. This approach is consistent with the lease advertising disclosure requirements of the revised CLA and the revised Regulation M.

Paragraph II of the proposed orders provides that lease advertisements that comply with the disclosure requirements of subparagraph I.C. of the orders shall be deemed to comply with section 184(a) of the CLA, as amended, or § 213.7(d)(2) of the revised Regulation M, as amended.

Paragraph III of the proposed orders provides that certain future changes to the CLA or Regulation M will be incorporated into the orders. Specifically, subparagraphs I.B. and I.C. will be amended to incorporate future CLA or Regulation M required advertising disclosures that differ from those required by the above order paragraphs. In addition, the definition of ''total amount due at lease signing or delivery,'' as it applies to subparagraphs I.B. and I.C. only, will be amended in the same manner. The orders provide that all other order requirements, including the definition of ''clearly and conspicuously,'' will survive any such revisions.

The information required by subparagraph I.C. must be disclosed ''clearly and conspicuously'' as defined in the proposed orders. The ''clear and

conspicuous'' definition requires that respondents present such lease information within the advertisement in a manner that is readable [or audible] and understandable to a reasonable consumer. This definition is consistent with the ''clear and conspicuous'' requirement for advertising disclosures in the revised Regulation M that requires disclosures that consumers can see and read (or hear) and comprehend and in prior Commission orders and statements, interpreting Section 5's prohibition of deceptive acts and practices, that require advertising disclosures that are readable (or audible) and understandable to reasonable consumers.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 97–27227 Filed 10–14–97; 8:45 am]

**BILLING CODE 6750–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Advisory Commission on Consumer Protection and Quality in the Health Care Industry; Notice of Public Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given on the meeting of the Advisory Commission on Consumer Protection and Quality in the Health Care Industry. This two-day meeting will be limited only by the space available.

*Place of Meeting:* The Watergate Hotel; 2650 Virginia Avenue, N.W., Washington, D.C. 20037, ((4) Subcommittee meetings: on Tuesday, October 21, 8:00 a.m.—12:30 p.m.; and the General Plenary Session II: on Wednesday, October 22, 8:00 a.m.—4:30 p.m.). The Embassy Row Hilton Hotel; 2015 Massachusetts Avenue, N.W., Washington, D.C. 20036, (General Plenary Session I, on Tuesday, October 21, 1:00 p.m.—6:30 p.m.). Exact meeting room locations will be available on the Commission's web site at ''http://www.hcqalitycommission.gov''.

*Times and Dates:* On Tuesday, October 21, (4) subcommittee(s) will meet from 8:00 a.m. until 12:30 p.m. and General Plenary Session I will be from 1:00 p.m. to 6:30 p.m. on Wednesday, October 22, General Plenary Session II will be from 8:00 a.m. to 4:30 p.m.

*Purpose/Agenda:* To hear testimony and continue formal proceedings of the full Advisory Commission and the four (4) subcommittees. Agenda items are subject to change.

*Contact Person:* For more information, including substantive program information and summaries of the meeting, please contact: Edward (Chip) Malin, Hubert Humphrey Building, Room 118F, 200 Independence Avenue, S.W., Washington, DC 20201; [202/205–3038].

Dated: October 6, 1997.

**Janet Corrigan,**

*Executive Director, Advisory Commission on Consumer Protection and Quality in the Health Care Industry.*

[FR Doc. 97–27225 Filed 10–14–97; 8:45 am]

**BILLING CODE 4110–60–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### Program Exclusions: September 1997

**AGENCY:** Office of Inspector General, HHS

**ACTION:** Notice of program exclusions.

During the month of September 1997, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

| Subject city, state | Effective date |
|---|---|
| **PROGRAM–RELATED CONVICTIONS** | |
| BOWMAN, JIMMY ALLEN, TITUSVILLE, FL | 10/07/97 |
| BOYD, KENNETH GEORGE, WINCHESTER, OR | 10/01/97 |
| BRENNAN, MANUEL FELIPE, MIAMI, FL | 10/02/97 |
| BUI, MAI QUYNH, SAN JOSE, CA | 10/01/97 |
| BUSH, JANE T, MONTGOMERY, AL | 10/02/97 |
| CAMPBELL, DENNIS, W PALM BEACH, FL | 10/07/97 |
| CAMPBELL, MARY A, PRINCETON, WV | 10/06/97 |
| CARR, CHARLES THOMAS, BIG SPRING, TX | 10/05/97 |
| CLARINGBOLD, THOMAS VERNON, TRENTON, MI | 10/07/97 |
| COHEN, STEVEN S, CAMP HILL, PA | 10/06/97 |
| COLLIER, SAMUEL J, NORTON, VA | 10/06/97 |
| COOPER, CONNIE RUTH, ALEXANDRIA, LA | 10/07/97 |
| DEL PENA, VIRGINIA, SAN JOSE, CA | 10/07/97 |
| FANECA, TERRY S, BRADENTON, FL | 10/02/97 |
| FERNANDEZ HERNANDEZ, TERESITA, MIAMI, FL | 10/07/97 |
| FISH, MARY CATHERINE, LEBANON, OR | 10/01/97 |
| FLOWERS, ROSE MARIE, LITTLE ROCK, AR | 10/05/97 |
| FOSTER, DONIETA, FLOWOOD, MS | 10/07/97 |
| GARLING, JESSIE RENEE, TUCKER, AR | 10/05/97 |
| GILL, ROSE S, YORKTOWN, VA | 10/06/97 |
| GONZALES, AMELIA, SACRAMENTO, CA | 10/01/97 |
| HAMMONDS, MICHAEL G, DELTONA, FL | 10/02/97 |
| HAMPTON, JOSEPH, N RICHLAND HILLS, IL | 10/07/97 |
| HASAN, IQBAL, STATEN ISLAND, NY | 10/06/97 |
| HEBRARD, TINA L, BEAVERTON, OR | 10/07/97 |

| Subject city, state | Effective date |
|---|---|
| HENRY, ANTHONY LEON, RIVIERA BEACH, FL | 10/07/97 |
| HERBER, TIMOTHY L, DAYTON, NV | 09/30/97 |
| HERNANDEZ, RAMON, MIAMI, FL | 10/02/97 |
| HERNANDEZ, YAMELIKA, MIAMI, FL | 10/07/97 |
| ILIESCU, CONSTANTIN, SCARSDALE, NY | 10/06/97 |
| JACQUELINE INC, BROOKLYN, NY | 10/06/97 |
| JOMADRIENNE INC, BROOKLYN, NY | 10/05/97 |
| KACZOR, DANIEL C, BLASDELL, NY | 10/06/97 |
| KELTZ, SUSAN KAY, LA GRANDE, OR | 10/01/97 |
| KOFA, BAILEY, LITHIA SPRINGS, GA | 10/02/97 |
| LESHNOWER, ALAN, NEW YORK, NY | 10/06/97 |
| LEWTER, PIA, PHOENIX, AZ | 09/30/97 |
| LUKENS, SHIELA K, PORTLAND, OR | 10/07/97 |
| MAJMUNDAR, GAURAVI K, ALDERSON, WV | 10/06/97 |
| MANTE, SUSAN MANTE, SAN JOSE, CA | 10/07/97 |
| MARTIN, PENNY, EXTON, PA | 10/06/97 |
| MICKEY, LORETTA K, KEIZER, OR | 10/07/97 |
| MILANES, EIDA, MIAMI, FL | 10/07/97 |
| MINOR, BRIAN MAURICE, DECATUR, GA | 10/02/97 |
| MIRAMAR CORPORATION, LAS VEGAS, NV | 09/30/97 |
| MOLDOVER, STANLEY, JENKINTOWN, PA | 04/10/97 |
| MURPHY, GEORGE B, ASHLAND, OR | 09/30/97 |
| MURPHY, PAMELA DENISE, N LITTLE ROCK, AR | 10/05/97 |
| NEWBY, DOUGLAS ALAN, SACRAMENTO, CA | 10/01/97 |
| NGHIEM, CHANG XUAN, SAN JOSE, CA | 10/01/97 |
| PEOPLE MOVER INC, ENGLEWOOD, CO | 10/07/97 |
| PETERSON, PATRICIA ANN, PHOENIX, AZ | 10/08/97 |
| RAHMAN, MOHAMMED SHAFIQUE, KEARNY, NJ | 10/06/97 |
| RAPUES, VIOLETA MANZANO, S SAN FRANCISO, CA | 10/01/97 |
| REEDER, RENA JOANN, PERRY, OK | 10/05/97 |
| REN CEN DEVELOPMENT SERVICES, OAK PARK, MI | 10/07/97 |
| REYES, WANDA, BRONX, NY | 10/05/97 |
| ROBERTS, LINDA KAY, SACRAMENTO, CA | 10/01/97 |
| ROTHSTEIN, STANLEY, PHILADELPHIA, PA | 03/25/97 |
| ROWE, JOHN A, EGLIN AFB, FL | 10/02/97 |
| RUECA, ROSALINDA PINEDA, LAS VEGAS, NV | 09/30/97 |
| SATOW, DEANE G, SAN DIEGO, CA | 10/07/97 |
| SCHOENLEBER, ERIKA K, MESA, AZ | 09/30/97 |
| SCOTT, YVONNE MARGARET, KINGMAN, AZ | 10/08/97 |
| SCOTTI, LOUIS, NESCONSET, NY | 10/06/97 |
| SILVA, JOHN WILLIAM, SACRAMENTO, CA | 10/07/97 |
| SMITH, MARY ANN, CONWAY, AR | 10/05/97 |
| SMITH, CYNTHIA LYNN, CONROE, TX | 10/05/97 |
| SMITH, THEODORE, DECATUR, GA | 10/07/97 |
| SOTOMAYOR, PEDRO A, CAGUAS, PR | 03/20/97 |
| SPANOS, MARY DARLENE, AMARILLO, TX | 10/05/97 |
| STALEY, STEVEN, W PALM BEACH, FL | 10/02/97 |
| STRASSMAN, WAYNE, WEST ORANGE, NJ | 10/06/97 |
| TERRY, DONN, PORTLAND, OR | 09/30/97 |
| THOMPSON, MARCEE MEGAN, SALT LAKE CITY, UT | 10/07/97 |
| THORNTON, ANNIE LAURIE FLEMING, MADISON, MS | 10/07/97 |
| TINSLEY, RODERICK WAYMOND, ENGLEWOOD, CO | 10/07/97 |
| TRAIGER, JACK, NEW CITY, NY | 10/06/97 |
| WALLACE, ANTHONY LAWRENCE, TUCSON, AZ | 09/30/97 |
| WATSON, CHARLOTTE S, QUINCY, FL | 10/02/97 |
| WATSON, GEORGE B, PERRY, FL | 10/02/97 |
| WEBB, RICHARD TOOMBS, ATLANTA, GA | 10/02/97 |
| WHISENANT, DOROTHY SEALE, HOLLY SPRINGS, MS | 10/02/97 |
| WILLIAMS, VERNEST E, BIRMINGHAM, AL | 10/02/97 |
| WIMPEE, BLAKE ALAN, THREE RIVERS, TX | 10/05/97 |
| WRIGHT, SUSAN MAE, LAKE STEVENS, WA | 10/01/97 |
| ZIVE, THEODORE RONALD, WORCESTER, MA | 10/06/97 |
| **PATIENT ABUSE/NEGLECT CONVICTIONS** | |
| BELMONT, CHERYL ANN, PORTLAND, OR | 10/01/97 |
| BORST, PATRICIA ANN, SALAMANCA, NY | 10/06/97 |
| BOVA, KELLY M, LARGO, FL | 10/06/97 |
| COBBINS, EARLINE, GRENADA, MS | 10/02/97 |
| COLLINS, MARY DEAN, LEWISVILLE, AR | 10/05/97 |
| DARBY, VIRGINIA SUE, STONEWALL, MS | 10/07/97 |
| DEWAR, WILLIAM R, PAUPACK, PA | 10/06/97 |
| DIEGO, DOLORES L, LIHUE, HI | 10/07/97 |

| Subject city, state | Effective date |
|---|---|
| DUPONT, DOREEN, LOWELL, MA | 10/06/97 |
| DUPREE, MARY MELISSA, DERRY, LA | 10/05/97 |
| FANARA, JOHN P JR, CONCORD, MA | 10/06/97 |
| FERRELL, TRESA, HAMILTON, MS | 10/02/97 |
| FIELDS, VERLYN MARIE, DENVER, CO | 10/07/97 |
| FIFIELD, LOIS LOUISE, WOODWARD, OK | 10/05/97 |
| FINOCHIO, PAUL R, EAST SYRACUSE, NY | 10/05/97 |
| FOXX HEALTH CARE, LTD, PORTLAND, OR | 10/01/97 |
| FREEMAN, JOHN A, MAYFLOWER, AR | 10/05/97 |
| GIBBS, SANDRA JEAN, JACKSONVILLE, FL | 10/02/97 |
| GOODWILL, ROSE MARIE, ARANSAS PASS, TX | 10/05/97 |
| GRIFFIN, PHAMETTA A, SAINT JOSEPH, LA | 10/05/97 |
| GRISSOM, ROBERT DOUGLAS, NOWATA, OK | 10/05/97 |
| HARRISON, ADELAIDE, SHELBURNE, MA | 10/06/97 |
| HARTE, SUSAN LESLEY, PENSACOLA, FL | 10/06/97 |
| HARTE, KALA R, PENSACOLA, FL | 10/06/97 |
| HESTER, GARY, ATHENS, TN | 10/07/97 |
| JACKSON, SHAWANA N, WARREN, AR | 10/05/97 |
| KANIES, MICHAEL P, SANDY, UT | 10/07/97 |
| KELLY, JOHN K, PINE BLUFF, AR | 10/05/97 |
| KIRBY, GARY WAYNE, SANTA ANA, CA | 09/30/97 |
| MALLETT, FRANK FITZGERALD JR, N LITTLE ROCK, AR | 10/05/97 |
| MARTINI, ALICE E, RAYMOND, ME | 10/06/97 |
| MOEUY, POLO S, PROVIDENCE, RI | 10/06/97 |
| MOORE, LALLIE JEANETTE, BAILEY, MS | 10/07/97 |
| MOYE, SARA, STARKVILLE, MS | 10/07/97 |
| PASCUA, JOHN, PAWTUCKET, RI | 10/06/97 |
| PHILLIPS, PATRICIA ANN, VINITA, OK | 10/05/97 |
| PRATT, CHARLES RAY, ALEXANDRIA, LA | 10/05/97 |
| RUTHERFORD, MARCI A, OGDENSBURG, NY | 10/06/97 |
| SCARLETT, SHERIL, MOUNT VERNON, NY | 10/06/97 |
| SCHADE, HUGH I, SAN JOSE, CA | 10/01/97 |
| STARK, MICHELLE ELIZABETH, BETHANY, OK | 10/05/97 |
| SUMMERVILLE, MINNIE, GRENADA, MS | 10/02/97 |
| TIGER, SAM DEAN, KONAWA, OK | 10/05/97 |
| UTTERBACK, CAREY JAY, TRIPP, SD | 10/07/97 |
| VANPELT, PAUL, MARGARETVILLE, NY | 10/06/97 |
| VINSON, CLARETTA, OKLAHOMA CITY, OK | 10/05/97 |
| VIOLETTE, EDWARD J, MIDDLETOWN, RI | 10/06/97 |
| WALLING, ALVIN WESLEY, BOLEY, OK | 10/05/97 |
| WILBURN, GLORIA JEAN, TROUP, TX | 10/07/97 |
| WINKOWITSCH, MILDRED YVONNE, CUT BANK, MT | 10/07/97 |
| YOUNG, BRANDON KIRK, DEL VALLE, TX | 10/05/97 |
| **CONVICTION FOR HEALTH CARE FRAUD** | |
| BELL, LATRICIA LATOYA, LITTLE ROCK, AR | 10/05/97 |
| BORGES, ALFREDO SR, CORAL GABLES, FL | 07/29/97 |
| BURGOS, HERNAN ENRIQUE, BASTROP, TX | 10/05/97 |
| CASSIANO, SYLVIA, NORTH HOLLYWOOD, CA | 09/30/97 |
| CAZEAU, ANTOINE, BROCKTON, MA | 10/06/97 |
| GONZALEZ, AIDA C., HIALEAH, FL | 11/04/96 |
| GONZALEZ, OLGA QUIRANTES, MIRMARA, FL | 07/30/96 |
| GONZALEZ, NELSON, MIAMI, FL | 07/30/97 |
| HYMEL, BERNARD H, BORON, CA | 08/06/97 |
| LINARES, GEORGE A, MIAMI, FL | 07/30/97 |
| LUNDEN, LISA E, WINTHROP, ME | 10/06/97 |
| MATUTO, IRENE, WORCESTER, MA | 10/06/97 |
| MCKNIGHT, REGINALD, BROOKLYN, NY | 10/06/97 |
| MILIAN, GABRIEL, MIAMI, FL | 07/30/96 |
| MUNGAI, LINDA, QUINCY, MA | 10/06/97 |
| PRAT, ANGELO, MIAMI, FL | 07/30/96 |
| PRAT, ESTHER, MIAMI, FL | 07/30/96 |
| RAITMAN, JOYCE, SOUTHAMPTON, PA | 10/06/97 |
| SADY–KENNEDY, SILVIA, MISSION VIEGO, CA | 09/30/97 |
| SSEREBE, WILLIAM, WALTHAM, MA | 10/06/97 |
| STATON, ZELBY, GREENVILLE, NC | 10/07/97 |
| SUMMERLIN, DARLENE, MIAMI, FL | 07/30/96 |
| YENTIS, RICHARD DAVID, EL RENO, TX | 10/05/97 |
| **CONTROLLED SUBSTANCE CONVICTIONS** | |
| JACOBSON, ALAN, PLAINVIEW, NY | 10/06/97 |

| Subject city, state | Effective date |
|---|---|
| KLASSEN, HAROLD J, ABERDEEN, ID | 10/01/97 |
| **LICENSE REVOCATION/SUSPENSION/SURRENDER** | |
| AMUNDSEN, S WILLIAM, HERMITAGE, PA | 10/06/97 |
| ARAGON, PERRY R, ISSAQUAH, WA | 10/01/97 |
| BICKEL, DEBORAH ANN, BERKELEY, CA | 10/07/97 |
| BITAR, SAMUEL, SOUTHINGTON, CT | 10/06/97 |
| BIXLER, ANDREW, DOVER–FOXCROFT, ME | 10/06/97 |
| BLANCHARD, DAVID SCOTT, DANBURY, CT | 10/06/97 |
| BLOCK ISLAND PHARMACY LTD, BLOCK ISLAND, RI | 10/06/97 |
| BOURNE, ANDREW R, CUMBERLAND, ME | 10/06/97 |
| BRALICH, DAVID J, CLEVELAND, OH | 10/07/97 |
| BRINK, DEBORAH ANNE, STOCKTON, CA | 10/07/97 |
| BROWN–AMBROSE, NANCY, S GLASTONBURY, CT | 10/06/97 |
| BURKE, SARAH, EAST NORWALK, CT | 10/06/97 |
| BYRAM, SARAH M, GORDONSVILLE, VA | 10/06/97 |
| CAREY, SHARON LEE, GLEN ELLEN, CA | 10/07/97 |
| CERVANTES, RICHARD CHARLES, LOS ANGELES, CA | 10/08/97 |
| CHMURA, LANCE KENNETH, STATE COLLEGE, PA | 10/06/97 |
| CLAVER, LIANNE E L, OAKLAND, CA | 10/01/97 |
| COLBERT, PATRICIA HEIDER, MINERAL POINT, PA | 10/06/97 |
| DE PASQUALE, BEVERLY JOANN, HESPERIA, CA | 09/30/97 |
| DENOYER, RICHARD ALLEN, AZUSA, CA | 09/30/97 |
| DORSEY, RAMONA JUANITA, GRAND TERRACE, CA | 09/30/97 |
| DUNBAR, KENNETH, LODI, CA | 10/01/97 |
| EDGERTON, RONALD GLEN, TROUTDALE, OR | 10/01/97 |
| EFFNER, MARY ANN, INDIO, CA | 10/07/97 |
| EVERHART, JAMES MACLEAN, ORANGEVALE, CA | 10/07/97 |
| FIORE, EDITH, SARATOGA, CA | 10/07/97 |
| FORD, WILLIAM HAROLD, CALIPATRIA, CA | 10/08/97 |
| FRAKER, JOSEPH TODD, LANCASTER, OH | 10/07/97 |
| GANTI, SHASHI DHAR, PASADENA, CA | 10/08/97 |
| GARLAND, LESLIE C, TORRANCE, CA | 10/08/97 |
| GRIFFIN, ARTHUR, NORFOLK, VA | 10/06/97 |
| GRIFFIN, JAMES E, SPRINGFIELD, MA | 10/06/97 |
| GRODEN, DAVID L, ROCHESTER, MN | 10/09/97 |
| HAIRSTON, ROSETTA ELIZABETH, TRACY, CA | 10/01/97 |
| HAMBRIC, DOROTHY E, NORFOLK, VA | 10/06/97 |
| HANNA, MAGED F, HILLIARD, OH | 10/09/97 |
| HANSEN, CATHERINE, NEW HAVEN, CT | 10/06/97 |
| HANSON, LAURIE LEE, COSTA MESA, CA | 10/01/97 |
| HARPER, THERESE KATHLEEN, PORTERVILLE, CA | 10/01/97 |
| HERBETS, STEVEN SCOTT, LA HABRA, CA | 09/30/97 |
| HIGGINS, THOMAS P, FRAMINGHAM, MA | 10/06/97 |
| HO, RICHARD KAY–YIN, SAN JOSE, CA | 10/07/97 |
| HOFFMAN, ELIZABETH JANE, PEACEDALE, RI | 10/06/97 |
| HOLLIS, ROBERT L, VALDOSTAN, GA | 10/02/97 |
| HORVATH, CHARLES N, LA VERNE, CA | 09/30/97 |
| HUTCHINSON, JOANNE BURTLE, SCHUYLER, VA | 10/06/97 |
| IPPISCH DIESING, JILL KAREN K, CHICO, CA | 10/07/97 |
| JAVAHERI, AHMAD, CORONA, CA | 10/08/97 |
| JAVIDI, KOUCHEK, STOCKTON, CA | 10/07/97 |
| JOHNSON, JACQUELINE, CHARLES CITY, VA | 10/06/97 |
| KELLEY, WILLIAM T, SAN GABRIEL, CA | 10/08/97 |
| KENNEDY, JULIE ANNE, SANTA MONICA, CA | 09/30/97 |
| KIM, JOONG TAI, LA CANADA, CA | 10/08/97 |
| KIMBERLEY, STEPHEN LANGTON, EUGENE, OR | 10/07/97 |
| KNIGHT, JAMES W, SALINAS, CA | 10/07/97 |
| KNIGHT, ROBERT WILLIAM JR, REDWOOD CITY, CA | 10/01/97 |
| KRSUL, CARLA, MIDDLETOWN, VA | 10/06/97 |
| LAND, BRENDA C SIRON, WATSONVILLE, CA | 10/07/97 |
| LARSEN, CATHERINE A, MENASHA, WI | 10/09/97 |
| LIND, MARK E, RICHMOND, CA | 10/01/97 |
| LOWE, CYNTHIA, WARWICK, RI | 10/06/97 |
| MANDELL, ANDREW M, MT PLEASANT, SC | 10/02/97 |
| MANTZ, MARTIN C, JACKSON, OH | 10/07/97 |
| MARRAZZO, DEAN, BLAKELY, PA | 10/06/97 |
| MAURER, NELSON H, PACIFIC GROVE, CA | 10/07/97 |
| MCCARTHY, PAULA J, GILMANTON IRON WORKS, NH | 10/06/97 |
| MCGRANAGHAN, CHRISTY L, WEST LEBANON, NH | 10/06/97 |
| MEYERS, JEFFREY C, CLEAR LAKE, IA | 10/07/97 |
| MIRACLE, COLETTE T, SANTA ROSA, CA | 10/01/97 |

| Subject city, state | Effective date |
|---|---|
| MONTI, INEZ DIANA, BRONX, NY | 10/06/97 |
| NEAL, AMY S, NAPA, CA | 10/01/97 |
| NOEL, PHILLIP J, WOODSTOCK, VA | 10/06/97 |
| NOWICKI, SUSAN SCHNUPP, UPPER ST CLAIR, PA | 10/06/97 |
| OGREN, DEBRA A, OTTUMWA, IA | 10/07/97 |
| OLMSTEAD, LUKE R, SAN DIEGO, CA | 09/30/97 |
| PANNACCI, DONNA L, MECHANICSVILLE, VA | 10/06/97 |
| PARRISH, CHERLYN J, ATLANTA, GA | 10/02/97 |
| PEPE, RICHARD, MERIDEN, CT | 10/06/97 |
| PERKERSON, RALPH B JR, KINGSLAND, GA | 10/02/97 |
| PETERSMAN, MARGARET M, CINCINNATI, OH | 10/07/97 |
| POLLOCK, LAWRENCE, PICO RIVERA, CA | 09/30/97 |
| RANDOLPH, ELIZABETH MARIE, EVERGREEN, CO | 10/07/97 |
| RASCHE, DOROTHY E, SACRAMENTO, CA | 10/07/97 |
| RENSON, JEAN FELIX, STOCKTON, CA | 10/01/97 |
| SAMBS, JAMES M, SAN DIEGO, CA | 10/08/97 |
| SAUTER, SUSAN K, DES MOINES, IA | 10/07/97 |
| SCHNEIDER, EDUARDO H, LA PUENTE, CA | 10/08/97 |
| SCHROEDER, VERNON R, LAQUINTA, CA | 10/08/97 |
| SENGAL, TOUMSKI G, LOS ANGELES, CA | 10/08/97 |
| SHEA, PATRICK JOSEPH, ASHLAND, OH | 10/07/97 |
| SHEPERIS, JOSEPH, N KINGSTOWN, RI | 10/06/97 |
| SMETANA, JAMES W, VANDALIA, OH | 10/07/97 |
| SOMOGYI, EMIL L, LAFAYETTE, CA | 10/07/97 |
| ST CROIX, WILLIAM, EAST HARTFORD, CT | 10/06/97 |
| STARR, ROBERT, NEW CASTLE, PA | 10/06/97 |
| STEIR, BRUCE S, SAN FRANCISCO, CA | 10/07/97 |
| TALARICO, SAMUEL F, POLAND, OH | 10/07/97 |
| TOKOPH, CYNTHIA LOUISE, PASO ROBLES, CA | 10/08/97 |
| TORRES, LINDA RENEE, FRESNO, CA | 10/01/97 |
| TWEED, JONATHAN N, CHARLESTOWN, RI | 10/06/97 |
| UDALL, JOHN A, ARTESIA, CA | 10/08/97 |
| WILLIAMS, DAVID MICHAEL, BUFORD, GA | 10/02/97 |
| WINNARD, ELIZABETH M, WEST WARWICK, RI | 10/06/97 |
| WOHL, KENNETH E, BLOCK ISLAND, RI | 10/06/97 |
| **FEDERAL/STATE EXCLUSION/SUSPENSION** | |
| BECKER, MARLENE, AUBURN, ME | 10/06/97 |
| CARR, DALE A, MONMOUTH, ME | 10/06/97 |
| CESTARI, ROBERT, ROCKVILLE CTR, NY | 10/06/97 |
| HANIF, MUHAMMAD, BROOKLYN, NY | 10/06/97 |
| KLEIN, STEPHEN HOWARD, GREAT NECK, NY | 10/06/97 |
| KOMAL PHARMACY, INC, BROOKLYN, NY | 10/06/97 |
| KREPLIAK, EDWARD, PHILADELPHIA, PA | 10/06/97 |
| METRO–MED AMBULETTE, INC, ROCKVILLE CENTRE, NY | 10/06/97 |
| REID, JENETTE, BROOKLYN, NY | 10/06/97 |
| SEE, VINCENT ENG KHIM, TENAFLY, NJ | 10/06/97 |
| SHERMAN, HENRY MILES, EAST ORANGE, NJ | 10/06/97 |
| SIDDIQUE, NURULHASAN, W NEW YORK, NJ | 10/06/97 |
| SINGLETON, JEAN, SAN AUGUSTINE, TX | 10/05/97 |
| SPECIALTY CLINICAL LABORATORIE, NEW BRUNSWICK, NJ | 10/05/97 |
| SWISS, ROBERT E, NEW YORK, NY | 10/05/97 |
| SWISS MEDICAL SUPPLY, INC, NEW YORK, NY | 10/05/97 |
| THOMAS–MCNAIR, GLORIA, TRENTON, NJ | 10/05/97 |
| VALUE–RITE PHARMACY, INC, NEWARK, NJ | 10/06/97 |
| WASHINGTON, JOHN, MONTCLAIR, NJ | 10/06/97 |
| **FRAUD/KICKBACKS** | |
| A–1 ARTISTIC LANDSCAPING, INC, MIAMI, FL | 07/30/96 |
| ADVANCED MEDICAL DIAGNOSTICS, INDIANOLA, MS | 12/19/96 |
| CENTURY CELLULAR RENTAL, INC., MIAMI, FL | 07/30/96 |
| CHAN, CYNTHIA, LUTHERVILLE, MD | 08/01/97 |
| CHAN, BRIAN, LUTHERVILLE, MD | 08/01/97 |
| EICKEMEYER, JAY, CLARINDA, IA | 12/04/96 |
| FINE AUTO BROKER I, INC, CORAL GABLES, FL | 07/29/97 |
| FINE AUTO BROKER II. INC., MIRAMAR, FL | 07/30/97 |
| GARCIA, LUZ M, HOMESTEAD, FL | 11/22/96 |
| GARCIA, FELIZ R, HOMESTEAD, FL | 11/22/96 |
| GIL, GINA M, MIAMI, FL | 06/12/97 |
| HELPING TO LIVE, INC, HOMESTEAD, FL | 11/22/96 |
| LIVING IN PEACE, INC, HOMESTEAD, FL | 11/22/96 |

| Subject city, state | Effective date |
|---|---|
| LUCY'S OKYMETRY, INC, HOMESTEAD, FL | 11/22/96 |
| METZINGER, HARRY J, VOORHEES, NJ | 04/21/97 |
| NODAWAY VALLEY HOME HEALTH, CLARINDA, IA | 12/04/96 |
| QUALITY PAINTERS & INTERIOR, MIAMI, FL | 07/30/96 |
| QUALITY PLUS DIAGNOSTIC, INC., MIAMI, FL | 06/12/97 |
| RITTER, WILLIAM J, ELMIRA, NY | 04/21/97 |
| ROBERT & BROTHERS IMPORT–EXP, HOMESTEAD, FL | 11/22/96 |
| ROBERT & BROTHERS MED REPAIRS, HOMESTEAD, FL | 11/22/96 |
| SAS HEALTHCARE SERVICES INC, PA | 09/27/96 |
| **OWNED/CONTROLLED BY CONVICTED EXCLUDED** | |
| A GIFT FROM CHINA, INC, MIAMI, FL | 07/30/96 |
| A&E MEDICAL EQUIP OF S FLORIDA, FL | 08/05/97 |
| DYNAMIC DIAGNOSTIC INSTITUTE, HIALEAH, FL | 07/29/97 |
| FAMILY DENTAL CARE, EGLIN AFB, FL | 10/02/97 |
| MEDI–VAN TRANSPORT SERVICE INC, BRADENTON, FL | 10/02/97 |
| PLATINUM HEALTH CARE, GREENVILLE, NC | 10/07/97 |
| PRAIRIE HILLS FOR THE ELDERLY, BELLE FOURCHE, SD | 10/07/97 |
| PRECISE MEDICAL LABORATORIES, NEW BRUNSWICK, NJ | 10/06/97 |
| RICHARD WEBBS FAMILY PHARMACY, TOCCOA, GA | 10/02/97 |
| SEALE DRUG COMPANY, HOLLY SPRINGS, MS | 10/02/97 |
| SIGNATURE OF MIAMI, MIAMI, FL | 10/07/97 |
| SUPREME TAXICAB SERVICE, PERRY, FL | 10/02/97 |
| TERRY'S MEDICAL TRANSPORT, BRADENTON, FL | 10/02/97 |
| **DEFAULT ON HEAL LOAN** | |
| ALLIO, CHARLES MICHAEL, BURBANK, CA | 10/01/97 |
| BARTLETT, GARY EARL, HIGHLAND, CA | 10/07/97 |
| CARNETT, JEFFREY L, HILO, HI | 10/07/97 |
| CHERACHANKO, DEBORAH A, COTTONWOOD, CA | 10/07/97 |
| CONRAD, MARVIN, BALTIMORE, MD | 10/06/97 |
| DAO, LELAND H, HALEIWA, HI | 10/01/97 |
| HALL, JEROME W, NEWLAND, NC | 10/02/97 |
| JACKSON, FRANCESCA A, OAKLAND, CA | 10/07/97 |
| KING, WAYNE E, APACHE JUNCTION, AZ | 10/07/97 |
| MORGENSEN, KELLY A, PORTLAND, OR | 10/07/97 |
| RASKIN, BECKY R, PORTLAND, OR | 10/07/97 |
| RUSSELL, MICHAEL D, WEST HILLS, CA | 10/07/97 |
| STURTZ, RENATE E (LORINCZ), DEL MAR, CA | 10/01/97 |
| THOMAS, RANDY L, FAIRBANKS, AK | 10/07/97 |
| WILLIAMS, ROBERT L (WEAVER), LOS ANGELES, CA | 09/30/97 |
| WOODHAM, MARK A, TUMWATER, WA | 10/07/97 |

Dated: October 3, 1997.

**William M. Libercci,**

*Director, Health Care Administrative Sanctions, Office of Enforcement and Compliance.*

[FR Doc. 97–27212 Filed 10–14–97; 8:45 am]

BILLING CODE 4150–04–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

*Agenda/Purpose*: To review and evaluate grant applications.

*Committee Name*: National Institute of Mental Health Special Emphasis Panel.

*Date*: November 5, 1997.

*Time*: 11 a.m.

*Place*: The George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

*Contact Person*: Rehana A. Chowdhury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

*Committee Name*: National Institute of Mental Health Special Emphasis Panel.

*Date*: November 10, 1997.

*Time*: 10 a.m.

*Place*: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person*: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

*Committee Name*: National Institute of Mental Health Special Emphasis Panel.

*Date*: November 14, 1997.

*Time*: 3 p.m.

*Place*: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person*: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

*Committee Name*: National Institute of Mental Health Special Emphasis Panel.

*Date*: November 14, 1997.

*Time*: 8:30 a.m.

*Place*: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person*: Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

*Committee Name*: National Institute of Mental Health Special Emphasis Panel.

*Date*: November 18, 1997.

*Time*: 2 p.m.

*Place*: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person*: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane,

Rockville, MD 20857, Telephone: 301, 443–3936.

*Committee Name*: National Institute of Mental Health Special Emphasis Panel.

*Date*: November 21, 1997.

*Time*: 1 p.m.

*Place*: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person*: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated; October 7, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 97–27158 Filed 10–14–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Initial Review Group:

*Agenda/Purpose:* To review and evaluate grant applications.

*Committee Name:* Clinical AIDS and Immunology Review Committee.

*Date:* November 5–November 6, 1997.

*Time:* 8:30 a.m.

*Place:* One Washington Circle, One Washington Circle, N.W., Washington, DC 20037.

*Contact Person:* Regina M. Thomas, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

*Committee Name:* Mental Health Small Business Research Review Committee.

*Date:* November 6–November 7, 1997.

*Time:* 9 a.m.

*Place:* River Inn, 924 25th Street, N.W., Washington, DC 20037.

*Contact Person:* Yolanda M. White, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

*Committee Name:* Neuro-Immunology, Virology, and AIDS Review Committee.

*Date:* November 10, 1997.

*Time:* 8.30 a.m.

*Place:* Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, N.W., Washington, DC 20037.

*Contact Person:* Rehana A. Chowdury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 7, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–27159 Filed 10–14–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Nursing Research Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Review of Institutional National Research Service Award Applications (T32s), Postdoctoral Individual National Research Service Award Applications (F32s), and National Research Award Senior Fellowship Applications (F33s).

*Date:* October 29, 1997.

*Time:* 8:30 a.m.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

*Contact Person:* Carole Hudgings, Ph.D., R.N., Building 45, Room 3AN–12, 45 Center Drive, Bethesda, MD 20892, (301) 594–5976.

*Purpose/Agenda:* To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: October 7, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–27161 Filed 10–14–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Conference on Toward the Genetic Manipulation of Insects (Telephone Conference Call).

*Date:* October 16, 1997.

*Time:* 11:00 a.m. to Adjournment.

*Place:* Teleconference, 6003 Executive Boulevard, Solar Building, Room 4C01, Bethesda, MD 20892, (301) 496–2550.

*Contact Person:* Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892, (301) 496–7465.

*Purpose/Agenda:* To evaluate grant application.

*Name of SEP:* AIDS Vaccine Evaluation Group Mucosal Immunology Laboratory (Telephone Conference Call).

*Date:* October 22, 1997.

*Time:* 2:00 p.m. to Adjournment.

*Place:* Teleconference, 6003 Executive Boulevard, Solar Building, Room 1A2, Bethesda, MD 20892, (301) 496–2550.

*Contact Person:* Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892, (301) 496–7465.

*Purpose/Agenda:* To evaluate contract proposal.

*Name of SEP:* Pneumococcal Reference Laboratory and Clinical Trail Laboratory Support (Telephone Conference Call).

*Date:* October 27, 1997.

*Time:* 2:00 p.m. to Adjournment.

*Place:* Teleconference, 6003 Executive Boulevard, Solar Building, Room 1A2, Bethesda, MD 20892, (301) 496–2550.

*Contact Person:* Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892, (301) 496–7465.

*Purpose/Agenda:* To evaluate contract proposals.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure

of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: October 7, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–27163 Filed 10–14–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

*Name of SEP:* Cancer and Toxin Equivalency Factors (TEFs) for Dioxin and Dioxin-like Chemicals.

*Date:* November 18, 1997.

*Time:* 9:00 a.m.

*Place:* National Institute of Environmental Health Sciences, South Campus, Conference Room D450, Research Triangle Park, NC 27709.

*Contact Person:* Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

*Purpose/Agenda:* To review and evaluate grant applications.

*Name of SEP:* Review of T32 Grant Applications on Studies of Environmental Mutagens and Carcinogens and Conference Grant Applications (R13).

*Date:* November 21, 1997.

*Time:* 1:00 p.m.

*Place:* National Institute of Environmental Health Sciences, South Campus, 101 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Linda Bass, Ph.D., National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1307 and Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

*Purpose/Agenda:* To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: October 7, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–27164 Filed 10–14–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 62 FR 46751, dated September 4, 1997) is amended to reflect the establishment of the Division of Oral Health within the National Center for Chronic Disease Prevention and Health Promotion.

Section C–B, *Organization and Functions,* is hereby amended as follows:

After the functional statement for the *Program Services Branch (HCL84),* insert the following:

*Division of Oral Health (HCL9).* (1) Provides a national and international focus for the prevention and control of oral diseases and conditions, and for the prevention and control of infectious diseases in dentistry; (2) provides assistance to state and local governments, professional, educational, voluntary, and community-based organizations through consultation, training, promotion, education, surveillance, and other technical services; (3) assists state and local governments and other organizations in evaluating dental, oral, and infectious disease prevention activities; (4) develops and implements oral health activities for underserved racial and ethnic minority populations; (5) collects, analyzes, summarizes, and distributes information on the status of dental public health programs; (6) conducts and evaluates operational research to develop improved methodology for oral disease prevention; (7) develops and conducts surveillance of dental and oral disease problems; (8) maintains liaison with other federal agencies, state and local health agencies, and national organizations and groups on oral health activities; (9) collaborates with other components of CDC and DHHS in carrying out programs.

*Office of the Director (HCL91).* (1) Manages, directs, and coordinates the activities of the Division of Oral Health (DOH); (2) provides leadership and guidance in policy formulation, program planning and development, program management and operations; (3) provides administrative, fiscal, procurement, and technical support for the division; (4) coordinates responses to all congressional, public, and Freedom of Information inquiries; (5) coordinates all clearance functions; (6) manages all personnel activities, including staff recruitment, assignment, and career development; (7) coordinates activities of the division with other components of CDC.

*Program Services Branch (HCL92).* (1) Develops and recommends criteria and standards to be used in program planning and evaluation of public oral health programs; (2) provides consultation to and maintains liaison with state and local health agencies, national and international dental associations, health professional groups, and voluntary and community-based organizations in the areas of information exchange, education, and health promotion to support oral disease prevention and control efforts; (3) provides consultation and assistance to federal agencies for the prevention and control of oral diseases and for oral health promotion; (4) develops and implements oral health activities for underserved racial and ethnic minority populations; (5) assists state and local health departments in evaluating their programs and makes recommendations to facilitate improvement of programs; (6) designs, develops, coordinates, and disseminates guidelines related to dental disease prevention and oral health promotion; (7) develops and conducts national water fluoridation training for state engineering and dental personnel; (8) collects, compiles, and distribution data on the quality of water fluoridation; (9) develops or assists with the development of home study and classroom training materials related to oral disease prevention and oral health

promotion, for use by state and local departments of health; (10) evaluates information, educational activities, and oral health promotion projects proposed or completed by other agencies or private organizations; (11) develops procurement and assistance documents and monitors their progress; (12) collaborates with other components of CDC in developing and carrying out programs.

*Surveillance, Investigations, and Research Branch (HCL93).* (1) Compiles and analyzes data on oral health information and dental health care workers from various national, regional, state, and community sources; 92) develops and supports, in collaboration with State and local health departments and other components of CDC, prototype surveillance systems, including protocols for measurement of oral health status, services, and systems; (3) monitors progress toward the achievement of the national oral health objectives; (4) conducts epidemiologic investigations of infectious diseases that occur within the dental setting and makes recommendations to prevent disease transmission during the provision of oral health services (5) maintains current scientific literature and CDC policy issuances that relate to oral health and infectious diseases; (6) serves as consultants to dental professional organizations and other federal agencies on subjects related to community-based prevention or oral diseases and assurance of the safety of the dental care environment; (7) develops research guidelines, designs protocols, and implements and evaluates oral health and infectious disease studies related to dentistry; (8) develops procurement and assistance documents and monitors their progress to support studies that examine important research questions related to community-based measures to prevent oral diseases or promote oral health.

Dated: October 2, 1997.

**Claire V. Broome,**

*Acting Director.*

[FR Doc. 97–27290 Filed 10–14–97; 8:45 am]

**BILLING CODE 4160–18–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Tribal-State Gaming Compact taking effect.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing the Tribal-State Compact between the Pueblo of San Juan and the State of New Mexico executed on July 11, 1997. By the terms of IGRA this Compact is considered approved, but only to the extent the compact is consistent with the provisions of IGRA.

**SUPPLEMENTARY INFORMATION:** The Department believes that the decision to let the 45-day statutory deadline for approval or disapproval of the Compact expire without taking action is the most appropriate course of action given the unique history of state and federal court cases and legislative actions that have shaped the course of Indian gaming in New Mexico. A letter further explaining the Department's decision is available from the Bureau of Indian Affairs, Indian Gaming Management Staff at the address below.

**DATES:** This action is effective October 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Paula L. Hart, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, 1849 C Street NW, MS 2070–MIB, Washington, DC 20240, (202) 219–4068.

Dated: September 8, 1997.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 97–27292 Filed 10–14–97; 8:45 am]

**BILLING CODE 4310–02–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–030–97–1330–00]**

### Notice of Closure of Public Lands

**ACTION:** Notice of closure of public lands to discharge of firearms, Carson City, Nevada.

**AGENCY:** Bureau of Land Management, Department of the Interior.

**SUMMARY:** Notice is hereby given that certain public lands in the vicinity of Pine Nut Road #2 are closed to the discharge of firearms. This closure is necessary for public safety and to prevent impacts to soil and vegetative resources at a BLM community sand and gravel pit that recently had an extensive cleanup conducted at the site.

**EFFECTIVE DATES:** This closure will take effect on or before November 14, 1997. Interested parties may submit comments to the Carson City District Manager, John O. Singlaub.

**SUPPLEMENTARY INFORMATION:** This closure applies to the discharge of firearms except for emergency and law enforcement personnel during the conduct of their official duties. The public lands affected by this closure are discribed as follows:

**Mt. Diablo Meridian.**

T. 12 N., R. 21 E., Sec. 7: S½SE¼,
Sec. 18: N½NE¼, N½SE¼NE¼,
N½NE¼NW¼, N½S½NE¼NW¼.

**Authority:** 43 CFR 8364-Closure and Restriction Orders; 43 CFR 8365.1–6–Supplementary Rules of Conduct.

### Penalty

Any person who fails to comply with this closure may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 USC 3571, or both.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Tauchen, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701, Telephone: (702) 885–6000.

A map of the closed area is available at the Carson City District Office.

Dated: September 24, 1997.

**John O. Singlaub,**

*District Manager, Carson City District.*

[FR Doc. 97–27213 Filed 10–14–97; 8:45 am]

**BILLING CODE 4310–HC–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–912–08–0777–52]**

### Call for Nominations on the Utah Resource Advisory Council (RAC)

**SUMMARY:** The purpose of this notice is to solicit nominations for a vacancy on the Utah Bureau of Land Management Resource Advisory Council. Utah residents with an interest and background in energy and mining development are being sought to fill this vacancy on the 15-person Council which has occurred due to the resignation of one of its members. The person selected will serve out the remaining balance of a 2-year term of the Council that will run through August 1999.

Nominees will be evaluated based on their experience or knowledge of the geographic area; education, training and/experience; and, their experience in working with disparate groups to achieve collaborative solutions. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications. The Bureau of Land Management, along with the Governor's Office, will forward the nominations to the Secretary of the Interior, who will make the appointment to the Council.

Resource Advisory Councils were established and authorized in 1995 by the Secretary of the Interior to provide advice and recommendations to the Bureau of Land Management on management of public lands.

**FOR FURTHER INFORMATION CONTACT:** Anyone interested in requesting a nomination form should inquire at the Bureau of Land Management, Utah State Office, Attention: Sherry Foot, 324 South State Street, Salt Lake City, Utah, 84111; telephone (801) 539–4195 or by contacting John Harja, State of Utah, at (801) 538–1559. All nominations must be received no later than close of business November 21, 1997.

Dated: October 8, 1997.

**G. William Lamb,**

*State Director.*

[FR Doc. 97–27216 Filed 10–4–97; 8:45 am]

**BILLING CODE 4310–DQ–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–060–07–1210–00]**

### Meeting of the California Desert District Advisory Council

**SUMMARY:** Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands near Holtville, California on Thursday, November 13, 1997, from 7:30 a.m. to 5 p.m., and meet in formal session on Friday, November 14 from 8 a.m. to 5 p.m., and Saturday, November 15 from 8 a.m. to 12 noon. The Friday and Saturday public meetings will be held in the conference room at the Barbara Worth Country Club, located at 2050 Country Club Drive, Holtville, California.

Council members will assemble for the Thursday field tour at the Barbara Worth Country Club parking lot at 7:15 a.m. and depart at 7:30 a.m. The public is welcome to participate in the field tour, but should dress appropriately and plan on providing their own transportation, food, and beverage. Anyone interested in participating in the field tour should contact BLM public affairs at (909) 697–5215 for more information.

The Friday meeting will begin at 8 a.m. All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comment may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

**FOR FURTHER INFORMATION CONTACT:** Carole Levitzky or Doran Sanchez, BLM California Desert District Public Affairs at (909) 697–5215.

Dated: October 6, 1997.

**Tim Salt,**

*Acting District Manager.*

[FR Doc. 97–27218 Filed 10–14–97; 8:45 am]

**BILLING CODE 4310–40–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–910–0777–51]**

### Notice of Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Iditarod Advisory Council Meeting.

**SUMMARY:** The Iditarod Advisory Council will conduct an open meeting Wednesday, November 12, 1997, and Thursday, November 13, 1997, from 9 a.m. to 5 p.m. each day. The purpose of the meeting is to discuss the formation of a non-profit organization to assist in the management of the Iditarod National Historic Trail. The meeting will be held at the Iditarod Trail Committee Headquarters in Wasilla, AK.

Public comments pertaining to management of the Iditarod National Historic Trail will be taken from 1–2 p.m. on Wednesday, November 12. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

**ADDRESSES:** Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599.

**FOR FURTHER INFORMATION CONTACT:** Teresa McPherson at (907) 271–5555.

Dated: October 7, 1997.

**Tom Allen,**

*State Director.*

[FR Doc. 97–27219 Filed 10–14–97; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–030–08–1120–00: GP8–0004]**

### Notice of Change of Public Comment Time at October 27 and 28, 1997 Meeting of Southeast Oregon Resource Advisory Council

**AGENCY:** Vale District, Bureau of Land Management, Interior.

**ACTION:** Notice of change of public comment time at October 27 and 28, 1997 meeting.

**SUMMARY:** Notice is given that there will be a meeting of the Southeast Oregon Resource Advisory Council.

**DATES:** The Southeast Oregon Resource Advisory Council meetings will begin at 8:00 a.m. and run to 5:00 p.m. October 27, 1997. Public comment time is changed and is now scheduled from 8:00 a.m. to 8:15 a.m. October 28, 1997. On October 28, 1997 the meeting will run from 8:00 a.m. to 12:00 noon.

At an appropriate time, the council will recess for approximately one hour for lunch. Topics to be discussed during the meeting are administrative activities of the Council, the workload for fiscal year 1998, noxious weeds, fuels and prescribed fire, water quality issues, and such other issues as to properly come before the Council.

**ADDRESSES:** The Southeast Oregon Resource Advisory Council meetings will take place at the Malheur National Forest Headquarters, Federal Building, 431 Patterson Bridge Road, John day, Oregon 97845.

**FOR FURTHER INFORMATION CONTACT:** Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon

Street, Vale, OR 97918, (Telephone 541 473–3144).

**Edwin J. Singleton,**

*District Manager.*

[FR Doc. 97–27214 Filed 10–14–97; 8:45 am]

**BILLING CODE 4310–33–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains in the Control of the National Park Service, Haleakala National Park, Makawao, HI

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains in the control of the National Park Service, Haleakala National Park, Makawao, HI.

A detailed assessment of the human remains was made by National Park Service professional staff in association with professional staff from the Bishop Museum and in consultation with representatives of the Hawai'i Island Burial Council, Hui Malama i na Kapuna o Hawai'i Nei, Kona Hawaiian Civic Club, Maui/Lana'i Island Burial Council, Moloka'i Island Burial Council, and Office of Hawaiian Affairs. All of the human remains have been curated by the Anthropology Department of the Bernice P. Bishop Museum in Honolulu, Hawai'i since their initial recovery.

Between 1920 and 1962, human remains representing at least 16 individuals were recovered from three sites, located within park boundaries in and around Haleakala crater, during legally authorized fieldwork and excavations. No known individuals were identified. No associated funerary objects were present. The dates for the remains have not been established but they probably date from both before and after contact was established between Native Hawaiians and Europeans in A.D. 1778.

In 1920, human remains representing two individuals were recovered from Na Piko Haua, located within the boundaries of Haleakala crater, during legally authorized fieldwork by Kenneth Emory of the Bishop Museum. The human remains are two individual bundles, wrapped in blue cotton fabric, dark brown hair and paper and tied with white thread. No known individual was identified. No associated funerary objects are present. On the basis of information provided by a local guide in 1920, the bundles' state of preservation, and the presence of imported cotton cloth, these navel string bundles probably date from the late 19th to early 20th century. These bundles were donated to the Bishop Museum in 1924 by the collector, who identified them as ''portions of two navel strings [umbilical cords] wrapped in hair and cloth.''

Aside from facilities clearly of 20th century origin, virtually all evidence of human use and occupation of the Haleakala crater area is of Native Hawaiian origin. Available evidence indicates that Native Hawaiians are the only group to bury their dead in the crater region. In addition, the manner of burial of the human remains (in or near Native Hawaiian structures, in a lava tube, etc.) is consistent with Native Hawaiian practices during both pre- and post-contact periods. Further, the Native Hawaiian practice of burying the dead in or near their home community suggests that all burials found in or near Haleakala crater on the island of Maui are of people from Maui communities.

With regard to the navel string bundles, one of the Native Hawaiian men who accompanied Emory in 1920 stated that his own umbilical cord had been hidden at Na Piko Haua. The practice of depositing umbilical cords in at least this one location in the Haleakala crater was a Native Hawaiian practice in effect until ca. 1920. As in the case of burials, it was customary for Native Hawaiians to deposit umbilical cords in the general vicinity of the community where the birth had taken place. This practice was confirmed by the Native Hawaiian guide. Based on this information, the navel string bundles in the collection are considered to be from infants born in communities on the slopes of Haleakala.

Based on the above-mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least 18 individuals of Native American ancestry. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3003 (2), there is a relationship of shared group identity which can reasonably be traced between these Native American human remains and the Maui/Lana'i Island Burial Council.

This notice has been sent to officials of the Hawai'i Island Burial Council, Hui Malama i na Kapuna o Hawai'i Nei, Kona Hawaiian Civic Club, Maui/Lana'i Island Burial Council, Moloka'i Island Burial Council, and Office of Hawaiian Affairs. Representatives of any other Indian tribe or Native Hawaiian organization that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Don Reeser, Superintendent, Haleakala National Park, PO Box 369, Makawao, Maui, HI, 96768; telephone: (808) 572–9306, before [*thirty days after publication in the* **Federal Register**]. Repatriation of the human remains to the Maui/Lana'i Island Burial Council will begin after that date if no additional claimants come forward.

Dated: October 6, 1997.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 97–27215 Filed 10–14–97; 8:45 am]

**BILLING CODE 4310–70–F**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Western Colorado Area Office, Grand Junction, Colorado

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare a supplemental environmental impact statement.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) intends to prepare a supplemental environmental impact statement on the AB Lateral Hydropower Project. The project would be located in Montrose County, Colorado. The purpose of the hydropower project is to economically develop the energy potential of water flows from the Gunnison River through the existing Gunnison Tunnel to the Uncompahgre River.

**DATES:** The Supplemental EIS is expected to be available for public comment in 1998.

**ADDRESSES:** For information concerning the supplemental NEPA work, or information or suggestions concerning the work, contact Mr. Steve McCall, Environmental Specialist, Western Colorado Area Office, Bureau of Reclamation, P.O. Box 60340, Grand Junction CO 81506.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve McCall at (970) 248–0600.

**SUPPLEMENTARY INFORMATION:**

#### Background

A final environmental impact statement (FEIS 90–25) was filed on

August 28, 1990. The FEIS described four alternatives for the proposed construction and operation of a hydropower project using features of Reclamation's Uncompahgre Valley Reclamation Project (UVRP). Reclamation is considering executing a lease of power privilege (a type of contract) with a private company to use facilities for this project. A Section 404 Permit under the Clean Water (Act) is also required for the project.

The alternatives described in the FEIS provided for additional water diversions from the Gunnison River through the existing Gunnison Tunnel to a penstock and powerplant near Montrose, Colorado. The significant issues addressed in the FEIS included the impacts of reduced flows in the Gunnison River, increased flows in the Uncompahgre River, economic impacts in local counties, and impacts on wetlands. Since publication of the FEIS, additional information has become available concerning proposed bank stabilization plans along the Uncompahgre River, endangered species, resources along the Gunnison River, and power sales.

Hydropower development in association with the UVRP was authorized by the Act of June 22, 1938 (Pub. L. 75–698, Stat. 941). Under the Act, the hydropower facility would be constructed and operated under a lease of power privilege with Reclamation. This lease would provide for cost reimbursement fees, Reclamation's role as overseer, and the Sponsor's obligations, including environmental commitments. Funding for the hydropower studies is provided by the project proponents. Reclamation serves as the lead Federal agency responsible for ensuring compliance with NEPA.

### Potential Federal Action

Two major Federal actions are pending on the project: execution of a lease of power privilege by Reclamation and issuance of a Section 404 Permit under the Clean Water Act by the Corps of Engineers.

Dated: October 7, 1997.

**Charles Calhoun,**

*Regional Director, Upper Colorado Region.*

[FR Doc. 97–27231 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–94–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Garrison Diversion Unit

**AGENCY:** Bureau of Reclamation, in conjunction with U.S. Fish and Wildlife Service, and the North Dakota Game and Fish Department.

**ACTION:** Notice of availability of Final Environmental Impact Statement (FEIS).

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation, acting as lead Federal agency, in conjunction with the Fish and Wildlife Service and North Dakota Game and Fish Department, has prepared a Final Environmental Impact Statement (FEIS) on the Arrowwood National Wildlife Refuge (NWR) mitigation project. The FEIS evaluates the impact to the environment of seven alternatives, including no action, for mitigating adverse impacts of Jamestown Reservoir on Arrowwood NWR. The project would improve refuge water management capability through construction of various bypass channels, water control structures, and fish barriers. In addition, the normal operating level of Jamestown would be lowered approximately 1.8 feet. This mitigation is required by the Garrison Diversion Unit Reformulation Act of 1986 (P.L. 99–294) and the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668jj).

**DATES:** A 30-day public comment period commences with the publication of this notice.

**ADDRESSES:** Obtain information relative to the study or a copy of the FEIS from: Greg Hiemenz, Project Coordinator, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502.

**FOR FURTHER INFORMATION CONTACT:** Greg Hiemenz, Project Coordinator, at (701) 250–4242 extension 3611 or Dennis E. Breitzman, Area Manager, at (701) 250–4242.

**SUPPLEMENTARY INFORMATION:** Arrowwood NWR is located on the James River in Stutsman and Foster Counties, North Dakota. The refuge lies within the flood pool of Jamestown Reservoir, a component of the Garrison Diversion Unit, and has, on numerous occasions, been adversely affected by reservoir operations.

Seven alternatives for mitigating impacts to the refuge, including no action, were evaluated in the FEIS. The action alternatives comprise an incremental series of physical features, including bypass channels, water control structures, waterfowl sub-impoundments, and fish barriers, that could be constructed at Arrowwood NWR and Jamestown Reservoir to improve refuge water management. In addition, five of the six action alternatives would lower the normal operating level of Jamestown Reservoir and include measures to enhance the reservoir's sport fishery. Three of the alternatives would require off-site mitigation, including acquisition of private lands for development as wildlife habitat, to fully mitigate impacts to the refuge. The preferred alternative is the Mud and Jim Lakes Bypass—Lower Joint-use Pool Alternative. This is the least costly alternative that mitigates for all adverse impacts without requiring any acquisition of private land.

As part of the NEPA process, public scoping meetings were held during January 1994. The draft EIS was completed and sent out for agency and public review and comment in April 1996. Comments were received and replies are incorporated into the FEIS.

Dated: October 7, 1997.

**Neil Stessman,**

*Regional Director.*

[FR Doc. 97–27230 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–94–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehnsive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 29, 1997, a proposed De Minimis Consent Decree (''proposed Decree'') in *United States and State of Indiana* v. *A. H. Choitz, et al.,* Civil Action No. 1:97–CV–362, was lodged with the United States District Court for the Northern District of Indiana (Fort Wayne Division).

In this action the United States seeks relief under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. §§ 9606 & 9607, for cost recovery and abatement of hazardous substances relating to the Wayne Reclamation and Recycling Site (Site), located near Columbia City, Indiana.

The proposed Decree would resolve the liability of over 800 *de minimis* parties. These parties were customers of a now-defunct company known as Wayne Reclamation, which operated the Site in the 1970's and 1980's and which transported and disposed of a wide variety of substances, including waste oil. Each of the proposed *de minimis* settlers allegedly arranged with Wayne Reclamation for the disposal of minimal amounts of hazardous substances which ultimately were disposed of at the Site.

Under the proposed Decree, each of these 800-plus *de minimis* settlers

receives contribution protection for response costs incurred and to be incurred in cleaning up the Site, as well as covenants not to sue from the United States under Sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''). The State of Indiana, co-plaintfiff in this case, gives similar covenants to the *de minimis* settlers. Also joining the proposed Decree are private parties (''the Large Volume PRPs'') who are obligated under a prior consent decree with the United States and State of Indiana to design, construct, and maintain the remedial action that EPA selected for the Site. Under the proposed Decree, the Large Volume PRSs relinquish their contribution claims against all the *de minimis* settlers and against any other person not already sued in contribution for costs incurred in connection with this Site.

In return for these covenants, the *de minimis* settlers shall pay, in total, approximately $5.4 million to the large Volume PRPs. In addition, the United States and State of Indiana shall receive from the Large Volume PRPs approximately $203,000, in reimbursement of past costs and in resolution of a natural resource damages claim.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposing Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, and should refer to *United States and State of Indiana* v. *A.H. Choitz, et al.,* Civil Action No. 1:97–CV–362, D.J. Ref. 90–11–3–603A. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

The proposed Decree may be examined at the Office of the United States Attorney, 3128 Federal Building, 1300 S. Harrison Street, Fort Wayne, Indiana 46802, at the Office of Regional Counsel, U.S. EPA Region 5, 200 West Adams, Chicago, Illinois, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892.

A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the entire Decree, including all signature pages and attachments, please enclose a check in the amount of $126.25 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy of only the text of the proposed Decree, a stipulation related to the proposed Decree, and the signature page of the United States, please enclose a check in the amount of $9.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97–27205 Filed 10–14–97; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a second proposed Consent Decree in *United States* v. *H. Brown Co., et al.,* Civil Action No. 1:96 CV–949 (W.D. Mich.), entered into by the United States and seven (7) parties, was lodged on September 30, 1997, with the United States District Court for the Western District of Michigan. The proposed Second Consent Decree resolves certain claims of the United States for past and future costs under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. § 9601, *et seq.,* with respect to the H. Brown Superfund Site (''Site'') in Walker, Michigan. Under the terms of the proposed Consent Decree, the seven Settling Defendants will pay a total of $100,000 to the United States.

The Department of Justice will receive comments relating to the proposed Second Consent Decree During my tenure at the Board of Immigration Appeals, the attorney-advisor drafted legal opinions for the adjudicating body which addressed issues of law and fact appealed to the Board by the Immigration Service and should refer to *United States* v. *H. Brown Co., et al.,* D.J. Ref. No. 90–11–2–835A. The proposed Second Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, Grand Rapids, Michigan; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, telephone no. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $9.25 for the Decree, payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97–27211 Filed 10–14–97; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *MacGillis & Gibbs Co., and Soo Line Railroad Co.,* Civil Action No. 4:94–CV–848 (D. Minn.) entered into by the United States and the Soo Line Railroad Co. (''Soo Line''), was lodged on September 23, 1997, with the United States District Court for the District of Minnesota. The proposed Consent Decree resolves certain claims of the United States under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607, with respect to the MacGillis & Gibbs Co./ Bell Lumber & Pole Co. Superfund Site (''Site'') in New Brighton, Ramsey County, Minnesota.

Under the terms of the proposed Consent Decree, Soo Line agrees, *inter alia,* to pay the United States $75,000 in past response costs incurred in connection with the MacGillis & Gibbs portion of the Site, and $10,000 for federal Natural Resource Damages. In addition, Soo Line agrees to provide access to U.S. EPA to its property at the Site for purposes of implementing response actions, and agrees to record land use restrictions to ensure the protectiveness of the remedial measures at the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *MacGillis & Gibbs Co. and Soo Line Railroad Co.,* D.J. Ref. No. 90–11–2–904. The proposed Consent

Decree may be examined at the Office of the United States Attorney for the District of Minnesota, 234 United States Courthouse, 110 South Fourth Street, Minneapolis, Minnesota 55401; the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, telephone no. (202) 624–0892. A copy of the proposed Consent Decree with two appendices may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to DJ#90–11–2–904, and enclose a check in the amount of $8.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97–27208 Filed 10–14–97; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 C.F.R. § 50.7, notice is hereby given that a consent decree in *United States of America* v. *Pettinaro Construction Co., Inc., and Linder & Co., Inc.,* No. 97–123 LON (D. Del.), was lodged with the United States District Court for the District of Delaware on September 25, 1997.

The proposed consent decree would resolve the United States allegations in this enforcement action that the Defendants have violated Section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. § 1311(a), by clearing, grading, filing and/or excavating approximately 18 acres of wetlands in Bethany Bay Subdivision, Sussex County, Delaware, without a permit under Section 404 of the CWA.

The proposed consent decree would require the Defendants to: (1) Restore or create mitigation wetlands for all wetland areas impacted by the illegal discharges; (2) pay a $60, 000 civil penalty; and (3) record the consent decree in the local land records to assure that certain wetland areas remain undisturbed.

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. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Patricia Ross McCubbin, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *United States* v. *Pettinaro Construction Co., Inc.,* DJ Reference No. 90–5–1–1–4302.

The proposed consent decree may be examined at either the Clerk's Office, United States District Court, District of Delaware, 844 King Street, Wilmington, Delaware 19801 (telephone number: 302–573–6170), or at the Consent Decree Library, 1120 G Street, NW., 4th Floor Washington, DC 20005 (telephone number: 202–624–0892). Requests for a copy of the consent decree may be mailed to the Consent Decree Library at the above address, and must include a check in the amount of $12.75.

**Letitia J. Grishaw,**

*Chief, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 97–27250 Filed 10–14–97; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR § 50.7, 38 FR 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on September 29, 1997, a proposed consent decree in *United States* v. *John Reardon and Paul Reardon,* Civil Action No. 97–12197–T, was lodged with the United States District Court for the District of Massachusetts. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9601 *et seq.,* on behalf of the U.S. Environmental Protection Agency (''EPA'') against defendants John Reardon and Paul Reardon relating to the Norwood PCB Superfund Site (''Site'') in Norwood, Massachusetts. The Complaint alleges that the Reardons are liable under Sections 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (a)(2).

Pursuant to the Consent Decree, the Reardons will provide access to the portion of the Site under their ownership and control, and will impose institutional controls as their property to ensure the effectiveness of the remedial action at the Site. The United States will also recover response costs in the amount of $25,000 pursuant to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *John Reardon and Paul Reardon,* Civil Action No. 97–12197–T, D.J. Ref. 90–11–2–372B.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Massachusetts, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts, 02109, at Region I, Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts, 02203 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $18.25 payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97–27209 Filed 10–14–97; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as Amended, and the Resource Conservation and Recovery Act

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *RohmTech, Inc.,* Civil Action No. 97CV12200 EFH, was lodged on September 30, 1997, with the United States District Court for the District of Massachusetts. The proposed consent decree resolves the United State's claims against RohmTech at the Nyanza Chemical Waste Dump Superfund Site, located in Ashland, Massachusetts (''Site''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9601 *et seq.* and the Resources Conservation and Recovery Act, 42 U.S.C. § 6973.

RohmTech is the successor to a former owner and operator of the Site. The consent decree will also resolve the claims of the Commonwealth of Massachusetts (''Commonwealth'') in connection with the Site under CERCLA and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E.

Under the proposed consent decree, RohmTech will make an immediate payment to the United States and the Commonwealth in the amount of $4,000,000, plus interest. In addition, the United States and the Commonwealth will receive a percentage of gross proceeds from related insurance litigation and litigation against another potentially responsible party. Of the total payments, $2,100,000 will be paid to the United States and the Commonwealth in connection with claims for natural resource damages at the Site. The remaining money will be paid to the United States and the Commonwealth as reimbursement for response costs incurred and to be incurred at the Site. The amount of the payments to be made by RohmTech reflect the company's financial condition.

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *RohmTech, Inc.*, DOJ Ref. Number 90–11–2–340. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973.

The proposed consent decree may be examined at the Environmental Protection Agency, One Congress Street, Boston, Massachusetts (contact Joanna Jerison at 617–565–3350) and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $12.50 (50 pages at 25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97–27206 Filed 10–14–97; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant To The Comprehensive Environmental Response Compensation and Liability Act of 1980, As Amended

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *Taylor, et al.*, Civil Action No. 97CV12201EFH, was lodged on September 30, 1997, with the United States District Court for the District of Massachusetts. The proposed consent decree resolves the United States's claims against several potentially responsible parties (''Settling Defendants'') at the Nyanza Chemical Waste Dump Superfund Site, located in Ashland, Massachusetts (''Site''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9601 *et seq.* The consent decree will also resolve the claims of the Commonwealth of Massachusetts (''Commonwealth'') in connection with the Site under CERCLA and the Massachusetts Oil and Hazardous material Release Prevention and Response Act, M.G.L. c. 21E. The Settling Defendants include Scott D. Taylor, individually; the Estate of Roland E. Derby, Jr.; Scott D. Taylor in his capacity as Administrator of the Estate of Roland E. Derby, Jr.; the Estate of Roland E. Derby, Sr., and Edward M. Lynch, Jr. in his capacity as Executor of the Estate of Roland E. Derby, Sr. The consent decree includes a covenant not to sue by the United States under, *inter alia*, Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607 (including claims for natural resource damages), and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. § 6973.

Under the proposed consent decree, Scott D. Taylor will make a payment to the United States and the Commonwealth in the amount of $565,000 over a three-year period, plus interest. Of the $565,000 total, $424,000 will be paid the United States (EPA) as reimbursement for response costs incurred in connection with the Site, $106,000 will be paid to the Commonwealth as reimbursement for response costs incurred in connection with the Site, and $35,000 will be paid to the United States and the Commonwealth in connection with claims for natural resource damages. In addition, if the gross insurance proceeds recovered by the Settling Defendants in connection with the Site exceed $425,000, Settling Defendants shall pay to the United States and the Commonwealth 80% of the amount in excess of $425,000.

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Taylor, et al.*, DOJ Ref. Number 90–11–2–340B. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973.

The proposed consent decree may be examined at the Environmental Protection Agency, One Congress Street, Boston, Massachusetts (contact Joanna Jerison at 617–565–3350) and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $13.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97–27207 Filed 10–14–97; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Washington Central Railroad Company, Inc., et al.*, No. CV97–1400–ST (D. Oregon), was lodged on September 30, 1997, with the United States District Court for the District of Oregon. With regard to the Defendants,

the Consent Decree resolves a claim filed by the United States on behalf of the United States Environmental Protection Agency (''EPA'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, *as amended*, 42 U.S.C. 9601, *et seq.*

The United States entered into the Consent Decree in connection with the Environmental Pacific Corporation Site located in Amity, Yamill County, Oregon, approximately 42 miles southwest of Portland. The Consent Decree provides that the Settling Defendants will reimburse the United States a total of $83,953.68 for past costs incurred by the United States at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Washington Central Railroad Company, Inc., et al.*, DOJ Refs. #90–11–2–1080 and #90–11–3–1418.

The proposed Consent Decree may be examined at the office of the United States Attorney, 888 SW 5th Avenue, Portland, Oregon 97204; the Region 10 office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $20.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section.*

[FR Doc. 97–27210 Filed 10–14–97; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### International Competitiveness Advisory Committee

### Notice of Establishment of the International Competitiveness Advisory Committee

**AGENCY:** The Department of Justice.

**ACTION:** Notice of establishment of the International Competitiveness Advisory Committee.

**SUMMARY:** In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. II (1972), 41 CFR 101–6.1001–1.1035, and Executive Order 12838, the Antitrust Division of the Department of Justice, with the concurrence of the Attorney General, is establishing the International Competitiveness Advisory Committee. The Committee will examine and provide advice to the Department of Justice regarding issues relating to international trade and competitiveness.

Specifically, the Committee will provide advice regarding how best to forge a consensus on the need for aggressive action to eliminate multinational anticompetitive cartel agreements, how best to coordinate United States' and foreign antitrust enforcement efforts in the review of multinational mergers, and how best to coordinate United States' trade and competition policy to achieve their common objectives.

**MEMBERSHIP:** The Committee shall be composed of 12 representatives from both the public and private sectors with recognized expertise in the areas of international antitrust and/or trade policy. Criteria to be used in selecting members shall include: (1) a demonstrated background and interest in the antitrust issues to be addressed, (2) a balance in point of view or professional perspective, (3) geographical balance, and (4) nondiscrimination on the basis of race, color, national origin, religion, age, or sexual orientation.

The International Competitiveness Advisory Committee will function solely as an advisory board in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed in accordance with the provisions of the Act.

**CONTACT PERSON:** Charles S. Stark, Chief, Foreign Commerce Section, Antitrust Division, Room 10024 Patrick Henry Building, 601 D Street NW., Washington, DC 20530; (202) 514–2464.

**Joel I. Klein,**

*Assistant Attorney General, Antitrust Division.*

[FR Doc. 97–27204 Filed 10–14–97; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

October 9, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143) or by E-Mail to O'Malley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday-Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, POWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Pension Welfare Benefits Administration.

*Title:* Prohibited Transaction Exemption 80–83.

*OMB Number:* 1210–0064 (reinstatement).

*Frequency:* On occasion.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Number of Respondents:* 25.

*Estimated Time Per Respondent:* 2 minutes.

*Total Burden Hours:* 1.

*Total Annualized capital/startup costs.* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* This class exemption exempts from the prohibited transaction provisions of ERISA, certain transactions involving an employee benefit plan's purchase of securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest.

*Agency:* Pension Welfare Benefits Administration.

*Title:* Prohibited Transaction Exemption 75–1.

*OMB Number:* 1210–0092 (reinstatement).

*Frequency:* On Occasion.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Number of Respondents:* 750.

*Estimated Time Per Respondent:* .08 seconds.

*Total Burden Hours:* 1.

*Total Annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* This class exemption from the prohibited transaction of ERISA permits banks, registered broker-dealers and reporting dealers in Government Securities who are parties in interest to engage in certain kinds of securities transaction with plans.

*Agency:* Pension Welfare Benefits Administration.

*Title:* Prohibited Transaction Exemption 88–59.

*OMB Number:* 1210–0095 (reinstatement).

*Frequency:* On occasion.

*Affected Public:* Indivuduals or households; Business or other for-profit; Not-for-profit institutions.

*Number of Respondents:* 185.

*Estimated Time Per Respondent:* .32 seconds.

*Total Burden Hours:* 1.

*Total Annualized capital/startup costs: 0.*

*Total annual costs (operating/maintaining systems or purchasing services): 0.*

*Description:* This class exemption exempts from the prohibited transaction provisions of ERISA, certain transactions involving residential financing arrangements.

**Theresa M. O'Malley,**

*Departmental Clearance Officer.*

[FR Doc. 97–27251 Filed 10–14–97; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL GAMBLING IMPACT STUDY COMMISSION

### Meeting

**AGENCY:** National Gambling Impact Study Commission.

*Time and Date:* Friday, October 31, 1997, 9:30 a.m. to 3:00 p.m.

*Place:* The meeting site will be: The Grand Ballroom, Washington Dulles Airport Hilton, 13869 Park Center Road, Herndon, VA 20171.

*Status:* The meeting will be open to the public from 9:30 a.m. to 3:00 p.m., except that the meeting will be closed to the public from 11:00 a.m. to 12:00 p.m. for the purposes of considering internal personnel rules and practices and to allow for discussion of information of a personal nature during the consideration of hiring staff. Accordingly, it has been determined that this portion of the meeting will concern matters within sections 552b(c)(2) and (6) of Title 5, United States Code, and will be duly closed to public participation.

*Notice:* At its third public meeting, the National Gambling Impact Study Commission, established under Public Law 104–169, dated August 3, 1996, will hear presentations from the National Research Council and the Advisory Commission on Intergovernmental Relations; receive an update from the Research Subcommittee; discuss the workplan; consider any nominee(s) for executive director; discuss the rules of operation; and review rules for upcoming public comment.

*Contact Persons:* For further information, contact Amy Ricketts at (202) 523–8217 or write to 800 North Capitol Street, N.W., Suite 450, Washington, D.C. 20002.

**Kay C. James,**

*Chair.*

[FR Doc. 97–27226 Filed 10–14–97; 8:45 am]

BILLING CODE 6820–ET–P

## NATIONAL INDIAN GAMING COMMISSION

### Notice of Public Hearing and Call for Public Comment

**ACTION:** Notice of public hearing and call for comment.

**SUMMARY:** The National Indian Gaming Commission (NIGC) announces a public hearing on the effect of the Indian Gaming Regulatory Act (IGRA) and NIGC regulations on Internet gambling conducted by Indian Tribes.

**DATE:** The public hearing will be held on Friday, November 14, from 9:00 a.m. to 4:00 p.m. in Washington, D.C. An open forum for public participation will be held from 2:00 p.m. until 4:00 p.m.

**ADDRESS:** The public hearing will be held at the Department of Interior, Main Auditorium, 1849 C Street, Washington, DC.

**WRITTEN SUBMISSIONS:** Interested parties are invited to submit comments and materials to the NIGC. Such submissions should be sent to Tina Bloomquist, NIGC, 1441 L Street, NW, Suite 9100, Washington, DC 20005. The comment period closes December 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Tina Bloomquist, NIGC (see **ADDRESS** section) at (202) 632–7003.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Hearing

The NIGC will hear presentations from invited panelists representing Federal, State, Tribal and Corporate interests. There will be an open forum session of approximately two hours for the public to address the NIGC on issues relevant to the topic. Anyone wishing to make an oral presentation at the hearing should submit a request, in writing, to Tina Bloomquist at the NIGC address listed above, no later than October 30, 1997. Open forum participants should provide their name, organization (if any), address and phone number. Oral presentations will be limited to five minutes per speaker. Witnesses and panelists should prepare their remarks in writing and submit those remarks to the NIGC prior to the hearing. Written remarks should be limited to 5 pages, single spaced. Witnesses and panelists should bring 10 copies of their written remarks to the hearing. Such remarks will become part of the public comment materials avaialble for inspection.

#### II. Written Submissions

Comments may be submitted by facsimile transmission to Tina Bloomquist at (202) 632–7066. Comments may be filed before, during or after the hearing, but no later than December 5, 1997.

Written comments should include the following information:

1. Name and affiliation of the individual responding;
2. If applicable, information on the submitter's organization, including the type of organization (e.g., business, trade group, university, or non-profit organization) and the respondent's position.

#### III. Background

The NIGC was created by the Indian Gaming Regulatory Act of 1988. 25 U.S.C. § 2701 *et seq.* The NIGC is responsible for the regulation of most forms of gaming on Indian lands. Several Indian tribes currently offer gambling opportunities over the Internet, and others have expressed interest in doing so. A significant

amount of controversy exists over the legality of the use of the Internet by Indian Tribes as a means of offering gaming. Of particular note is the requirement of the IGRA that gaming by Indian Tribes be conducted ''on Indian lands.'' 25 U.S.C. § 2710(b)(1), § 2710(d)(1) and 25 U.S.C. § 2703(4).

Particpants in the hearing, and those submitting written comments are asked to consider the following questions:

1. How does the requirement under IGRA that tribal gaming be conducted ''on Indian lands'' affect the ability of the tribes to engage legally in Internet gambling?

2. What is the effect of other federal gambling statutes on tribal Internet gambling?

3. What is the scope of available Internet gambling offered by Indian tribes today?

4. What, if any, legislative or regulatory changes are required to clarify the effect of the IGRA on tribal Internet gambling?

5. What are the challenges implicit in regulating Internet gaming on Indian lands?

**Philip N. Hogen,**

*Commissioner, National Indian Gaming Commission.*

[FR Doc. 97–27274 Filed 10–14–97; 8:45 am]

BILLING CODE 7567–01–M

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request; Submission for OMB Review; Title of Collection: NSF Survey of Scientific and Engineering Research Facilities at Colleges and Universities

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

1. SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment, the first was published on July 31, 1997, in the **Federal Register** at 62 FR 147, 41093–41094. We received comments from two sources and after due consideration sent replies to the commenters. NSF is forwarding the proposed renewal submission, the comments with our responses, to OMB for clearance simultaneously with the publication of this second notice

2. DATES: The Office of Management and Budget (OMB) should receive written comments on or before November 14, 1997.

3. ADDRESSES: Submit comments to Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, N.W, Room 10235, Washington, D.C. 20503. Please include the current OMB Control Number 3145–0101 with your comments.

4. SUPPLEMENTARY INFORMATION:

(a) *Abstract.* In 1995 OMB approved both the 1996 and 1998 survey cycles of the NSF Survey of Scientific and Engineering Research Facilities at Colleges and Universities (OMB No. 3145–0101). The survey collects information on the science and engineering (S&E) research facilities at the nation's higher education institutions. The minor modifications to the approved 1998 questionnaire make the data of more use to Federal agencies and policy makers.

(b) Proposed Modifications to the OMB-Approved 1998 Survey

◆ *Sample size.* As requested by NIH, NSF, and OMB, we are requesting that the 1998 survey sample be increased from 315 to 365 to allow analyses by Carnegie classification, by minority serving institutions and institutions within the EPSCoR States for policy makers.

◆ *Items to be modified in the 1998 survey.*

√ *GSF* (gross square feet) in addition to the currently collected NASF (net assignable square feet). Institutions already have the GSF of a project to calculate the NASF of that project.

√ *Proportion of repair/renovation or new construction project cost,* in addition to the currently collected repair/renovation or new construction cost as a total, including non-fixed equipment over $1 million. This data are readily available to the institutions and should add very little burden.

√ *Percentage of institutional funds,* in addition to the currently collected proportion of construction and repair/renovation cost attributable to institutional funds. The question will be posed in two parts: one asking if the institution has ready access to these data; and second, if data are available, asking the institution to supply that data. This way of posing the question assures minimal burden to the respondent.

√ *Percentage of total animal research* NASF assigned to levels of restricted-use laboratories, in addition to the total NASF or animal laboratories, This is information readily available to the institutions and would be of minimal burden.

(c) *Item to be dropped from the 1998 survey.* We plan to omit the status of institutions relative to the cap on tax-exempt bonds (modification request by NIH and NSF).

**5. Use of the Information**

The information from this survey will be used by Federal policy makers, planners, and budget analysts in making policy decisions, as well as by academic officials, the S&E establishment, and State agencies that funds universities and colleges. The survey will provide updated data on the status of and trends in scientific and engineering research facilities to help policy makers with decisions about the health of academic S&E research, funding, regulations, and reporting guidelines.

Specifically, data will be used in:

◆ A separate report of the findings for Congress;

◆ A special report for NIH on the Status of Biomedical Research Facilities;

◆ Other NSF compilations such as National Patterns of R&D Resources and Science and Engineering Indicators;

◆ Special reports for other Federal agencies on an as-needed basis; and

◆ A public release file of collected data in aggregate form made available to researchers on the World Wide Web

**6. Expected Respondents**

The sample size for the 1998 survey is planned to be increased from 315 to 365 of the nation's higher education institutions, selected to provide nationally representative data for both undergraduate and graduate degree-granting schools. The respondents will have the option to complete the survey on disk. With the improvements in the computer-aid survey 60% of the institutions are expected to respond through this method in 1998.

**7. Burden on the Public**

The average completion time for the survey by academic institutions was reduced (from 43 to 24 hours) between 1988 and 1994. In 1996, with the continued improvements in institutional databases and the introduction of the option to complete the survey on disk, completion time was further reduced by one hour, bringing the 1996 average completion time for the survey by academic institutions to 23 hours.

Much of the data noted in the proposed modification are readily available to the respondents. It is expected that the proposed modifications to the questionnaire will cause little or no change in burden

hours. With an estimated 60% of the institutions expected to respond through this method in 1998, which will make possible a substantial reduction in response burden over 1996 (when 40% responded electronically). However, with the addition of 50 institutions the overall response time is expected to remain 24 hours.

Throughout the years as the survey instrument and data collection techniques have improved the response rate has improved and the average burden on the institutions declined.

The Burden estimates are as follows:

| Fiscal year | Number of institutions | Hours to respond |
|---|---|---|
| 1992 | 303 | 30. |
| 1994 | 309 | 24. |
| 1996 | 307 | 23. |
| 1998 | 357 | 24 est. |

Dated: October 7, 1997.

**Gail A. McHenry,**

*NSF Reports Clearance Officer.*

[FR Doc. 97–27203 Filed 10–10–97; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket NO. 50–382]**

## Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38 issued to Entergy Operations Inc., (the licensee) for operation of the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

The proposed amendment would change Waterford 3 Technical Specifications 3.3.3.7.3 (TSs) and Surveillance Requirement 4.3.3.7.3 for the broad range gas detection system. A change to the TS Basis 3/4.3.3.7 has been included to support this change. This change to the TSs is necessary due to a potential unreviewed safety question identified during final review prior to installation of a new broad range gas detection system approved by the Nuclear Regulatory Commission Staff on August 19, 1997 (Amendment 133). In effect, Entergy Operations is requesting that the TSs and associated Basis for the broad range gas detection system that were in effect prior to Amendment 133 be retained instead of implementing the approved Amendment 133.

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:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The broad range gas detection system has no effect on the accidents analyzed in Chapter 15 of the Final Safety Analysis Report. The habitability of the control room will be unchanged by use of the currently installed monitoring system and this change to the Technical Specifications. Since this proposed change will make operation of the facility the same as before Amendment 133, the probability and consequences of an accident associated with this change have been previously evaluated.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

*Response:* No.

The proposed Technical Specification change in itself does not change the design or configuration of the plant. Since this proposed change will make operation of the facility the same as it was before Amendment 133, no new or different type of accident from any accident previously evaluated will be created.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The broad range gas detection system has no effect on a margin of safety as defined by Section 2 of the Technical Specifications. The habitability of the control room will be unchanged from the configuration of the currently installed detection system and this change to the Technical Specifications. The margin of safety remains unchanged from the original licensing basis of the plant.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

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 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 November 14, 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 University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122. 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 N.S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W. Washington, DC, 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 October 7, 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 University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Dated at Rockville, Maryland, this 8th day of October 1997.

For the Nuclear Regulatory Commission.

**Chandu P. Patel,**

*Project Manager, Project Directorate, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–27237 Filed 10–14–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–309]**

## Office of Nuclear Reactor Regulation; Maine Yankee Atomic Power Company; Maine Yankee Atomic Power Station; Notice of Public Meeting to Receive Comment on Post-Shutdown Decommissioning Activities Report

The U.S. Nuclear Regulatory Commission has scheduled a public meeting to receive comments on the Post-Shutdown Decommissioning Activities Report (PSDAR) for the Maine Yankee Atomic Power Station (Maine Yankee) located in Lincoln County, Maine. The meeting will be held on November 6, 1997, beginning at 7:00 p.m. at the Wiscasset Senior High School in Wiscasset, Maine. The purpose of this informational meeting is

to (1) describe the licensee's planned activities, (2) describe the regulatory process for decommissioning, (3) hear public comments regarding health and safety, and protection of the environment during decommissioning, and (4) provide an opportunity for State and local representatives to participate. The licensee will discuss their plans to decommission the Maine Yankee facility. The NRC will discuss the PSDAR and the license termination process, and describe the program for future plant oversight. The public will have an opportunity to comment on the PSDAR and the meeting will be transcribed by a court reporter. Notice of receipt of and availability for public comment of the Maine Yankee PSDAR was published in the **Federal Register** on September 19, 1997 (62 FR 49261). Prior to the public meeting, comments regarding the Maine Yankee PSDAR may be submitted in writing to Mr. Michael Webb, Mail Stop 11–B–20, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 7th day of October 1997.

For the Nuclear Regulatory Commission.

**Ronald B. Eaton,**

*Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–27236 Filed 10–14–97; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Information to Licensees Regarding NRC Inspection Manual Section on Resolution of Degraded and Nonconforming Conditions; Issue

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of issuance.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has issued Generic Letter 91–18, Revision 1 to notify all holders of operating licenses for nuclear power reactors and non-power reactors, including those power reactor licensees who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, and non-power reactor licensees whose licenses no longer authorize operation, of the issuance of a revised section of Part 9900, ''Technical Guidance,'' of the NRC inspection manual. This generic letter is for information only; no specific action or written response is required. Conformance with the guidance provided in the generic letter is voluntary.

This generic letter is a ''rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C., Chapter 8). The staff has received confirmation from the Office of Management and Budget that the generic letter is not a ''major rule''.

The generic letter is available in the NRC Public Document Room under accession number 9710060322.

**DATES:** The generic letter was issued on October 8, 1997.

**ADDRESSEES:** Not applicable.

**FOR FURTHER INFORMATION CONTACT:** Eileen M. McKenna at (301) 415–2189.

**SUPPLEMENTARY INFORMATION:** The revised section of Part 9900 of the NRC inspection manual is entitled ''Resolution of Degraded and Nonconforming Conditions.'' The revisions to this section more explicitly discuss the role of the 10 CFR 50.59 evaluation process in the resolution of degraded and nonconforming conditions. In particular, a change in NRC staff guidance is addressed which states that the need to obtain NRC approval for the final resolution of a degraded or nonconforming condition does not affect the licensee's authority to continue facility operation (or effect a restart from a shutdown condition), provided that necessary equipment is operable and the degraded equipment is not in conflict with any technical specification. Nevertheless, it is noted that the NRC will take enforcement action if it determines that licensee corrective action (which may include the submittal of a license amendment request) is not prompt, or that operability determinations are not sound. Enforcement action may also be taken for the circumstances that led to the existence of the degraded or nonconforming condition.

Dated at Rockville, Maryland, this 8th day of October 1997.

For the Nuclear Regulatory Commission.

**Jack W. Roe,**

*Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–27238 Filed 10–14–97; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 5, 1996, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Tuesday, November 5, 1996—12:00 noon until 1:30 p.m.*

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS and the status of appointment of new members to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised

of any changes in schedule, etc., that may have occurred.

Dated: October 8, 1997.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 97–27239 Filed 10–14–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safety Research Program; Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on November 4–5, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Tuesday, November 4, 1997—8:30 a.m. until the conclusion of business.*

*Wednesday, November 5, 1997—8:30 a.m. until the conclusion of business.*

The Subcommittee will discuss the NRC Safety Research Program, industry research activities, and related matters, and gather information for preparing a draft annual report to Congress. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Nuclear Energy Institute, Electric Power Research Institute, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: October 8, 1997.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 97–27240 Filed 10–14–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of October 13, 20, 27, and November 3, 1997.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of October 13**

*Tuesday, October 14*

10:00 a.m.
Briefing on EEO Program (Public Meeting) (Contact: Ed Tucker, 301–415–7382)
1:00 p.m.
Briefing on Severe Accident Master Integration Plan (Public Meeting) (Contact: Charles Ader, 301–415–5622)

*Wednesday, October 15*

10:00 a.m.
Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)
11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

**Week of October 20—Tentative**

There are no meetings the week of October 20.

**Week of October 27—Tentative**

*Wednesday, October 29*

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)
2:00 p.m.
Briefing on Site Decommissioning Plan (SDMP) (Public Meeting)

**Week of November 3**

*Tuesday, November 4*

2:00 p.m.
Meeting with Commonwealth Edison (Public Meeting)

*Wednesday, November 5*

9:30 a.m.
Briefing on Staff's Plans for 50.59 Regulatory Process Improvements (Public Meeting)
11:00 a.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call: (Recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill (301) 415–1661.

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The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: October 10, 1997.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 97–27474 Filed 10–10–97; 3:05 pm]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide and Standard Review Plan Section; Issuance, Availability, and Notice of Workshop

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability and workshop.

**SUMMARY:** The Nuclear Regulatory Commission has issued for public comment drafts of a regulatory guide and a Standard Review Plan Section. These issuances follow the Commission's August 16, 1995 (60 FR 42622) policy statement on the ''Use of PRA Methods in Nuclear Regulatory

Activities.'' In June 1997, the NRC published for public comment (62 FR 34321) four draft guides, 3 standard review plans and a NUREG series document on the use of PRA in nuclear power reactor licensing. The NRC is developing guidance for power reactor licensees on acceptable methods for using probabilistic risk assessment (PRA) information and insights in support of plant-specific applications to change the current licensing basis (CLB) for inservice inspection of piping, known as risk-informed inservice inspection (RI–ISI) programs. The use of such PRA information and guidance will be voluntary. To facilitate comment, the Commission will conduct, a workshop to explain the draft documents and answer questions. Section VI of this notice provides additional information on the scope, purpose and topics for discussion at the workshop.

**DATES:** The workshop will be held on November 19–20, 1997, Registration begins on November 18 at 3:00 p.m. The comment period expires January 13, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Mail written comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please (1) attach a diskette containing your comments, in either ASC11 text or Wordperfect format (Version 5.1 or 6.1), (2) or submit your comments electronically via the NRC Electronic Bulletin Board on FedWorld or the NRC's interactive rulemaking Website.

Deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Requests for free single copies of draft regulatory guide and standard review plan, to the extent of supply, may be made in writing to the Printing, Graphics and Distribution Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, or by fax to (301) 415–5272. Copies of draft regulatory guide and the standard review plan section are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L street N.W. (Lower Level), Washington, D.C. 20555–0001. Electronic copies of the draft document are also accessible on the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site includes a facility to upload comments as files (any format), if your web browser supports the function.

For more information on the NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, D.C. 20555–0001, telephone (301) 415–5780; e-mail axd3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail cag@nrc.gov.

**ADDRESSES:** The public workshop will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland; telephone (301) 897–9400.

**FOR FURTHER INFORMATION CONTACT:** Jack Guttmann, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–7732, E-mail jxg@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On August 16, 1995, the Commission published in the **Federal Register** (60 FR 42622) a final policy statement on the use of probabilistic risk assessment methods in nuclear regulatory activities. The policy statement included the following regarding NRC's expanded use of PRA.

1. The use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC's deterministic approach and supports the NRC's traditional defense-in-depth philosophy.

2. PRA and associated analyses (e.g., sensitivity studies, uncertainty analyses, and importance measures) should be used in regulatory matters, where practical within the bounds of the state-of-the-art, to reduce unnecessary conservatism associated with current regulatory requirements, regulatory guides, license commitments, and staff practices. Where appropriate, PRA should be used to support proposals for additional regulatory requirements in accordance with 10 CFR 50.109 (backfit rule). Appropriate procedures for including PRA in the process for changing regulatory requirements should be developed and followed. It is, of course, understood that the intent of this policy is that existing rules and regulations shall be complied with unless these rules and regulations are revised.

3. PRA evaluations in support of regulatory decisions should be as realistic as practicable and appropriate supporting data should be publicly available for review.

4. The Commission's safety goals for nuclear power plants and subsidiary numerical objectives are to be used with appropriate consideration of uncertainties in making regulatory judgments on the need for proposing and backfitting new generic requirements on nuclear power plant licensees.

It was the Commission's intent that implementation of this policy statement would improve the regulatory process in three areas:

1. Enhancement of safety decisionmaking by the use of PRA insights,
2. More efficient use of agency resources, and
3. Reduction in unnecessary burdens on licensees.

To help implement the Commission's PRA Policy Statement, draft regulatory guides and Standard Review Plans (SRP) were developed in the areas of:

—General guidance,
—Inservice inspection (ISI),
—Inservice testing (IST),
—Technical specification (TS), and
—Graded quality assurance (GQA).

The draft regulatory guides provide a proposed acceptable approach for power reactor licensees to prepare and submit applications for plant-specific changes to the current licensing basis that utilize risk information. The draft standard review plans provide guidance to the NRC staff on the review of such applications. On June 25, 1997, all but the ISI draft regulatory guide and SRP were published for public comment (62 FR 34321).

This notice specifically seeks public comment on Draft Regulatory Guide DG–1063, ''An Approach for Plant-Specific Decisionmaking: Inservice Inspection of Piping,'' and the accompanying draft Standard Review Plan Section 3.9.8, ''Standard Review Plan for the Review of Risk-Informed Inservice Inspection of Piping.'' These documents are discussed in more detail below.

The draft guide and SRP are being developed to provide guidance to power reactor licensees and NRC staff reviewers on integrating risk information to support requests for changes in a plant's CLB for inservice inspection of piping. The regulatory guide describes a means by which licensees can propose plant-specific CLB changes under 10 CFR 50.55a(a)(3)(I). Adopting the approach in this regulatory guide would be voluntary. Licensees submitting applications for changes to their CLB may use this approach or an equivalent approach. To encourage the use of risk

information in inservice inspection programs of piping, the staff intends to give priority to applications for burden reduction that use risk information as a supplement to traditional engineering analyses, consistent with the intent of the Commission's policy. All applications that improve safety will continue to receive high priority.

DG–1061, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Current Licensing Basis,'' and the draft SRP of Chapter 19 were developed to provide an overall framework and guidance that is applicable to any proposed CLB change when risk insights are used to support the change (62 FR 34321). The application-specific regulatory guide (RG) and SRP for ISI would build upon and supplement the general guidance contained in DG–1061 and provide additional guidance specific to inservice inspection programs of piping.

The guidance provided in these documents is designed to encourage licensees to use risk information by defining an acceptable framework for the use and integration of risk information on a plant-specific basis, while promoting consistency in PRA applications. It is expected that the long-term use of risk information in plant-specific licensing actions will result in improved safety by focusing attention on the more risk-significant aspects of plant design and operation. The draft guidance highlights to licensees acceptable methods and scope of analysis required to support the proposed changes to the plant's CLB.

**II. Policy Issues**

On May 15, 1996, the Commission requested the staff to recommend resolution of the following four policy issues associated with risk-informed changes to a plant's CLB:

- The role of performance-based regulation,
- Plant-specific application of safety goals,
- Risk neutral vs. increases in risk,
- Implementation of changes to risk-informed IST and ISI requirements.

These issues are applicable to RI–ISI programs. Public comments on these issues were requested in the June 25, 1997 FRN (62 FR 34321) under the heading, ''Use of PRA in Plant Specific Reactor Regulatory Activities: Proposed Regulatory Guides, Standard Review Plan Sections, and Supporting NUREG.'' Comments provided on these issues in response to the June 25 FRN on related guides will be used by the staff in finalizing this guide as well. Comments on these issues as they specifically apply to this guide are also requested.

**III. Structure, Guidelines and Rationale for RG/SRP**

The approach described in the DG–1063 and the draft SRP has four basic steps. These are:

—Define the proposed change;
—Perform an integrated engineering analysis (which includes both traditional engineering and risk analysis) and use an integrated decision process;
—Perform monitoring and feedback to verify assumptions and analysis; and
—Document and submit proposed change.

Five fundamental safety principles are described that should be met in each application for a change in the CLB. These principles are.

—The proposed change meets the current regulation. This principle applies unless the proposed change is explicitly related to a requested exemption or rule change (i.e., a 10 CFR 50.12 ''specific exemption'' or a 10 CFR 2.802 ''petition for rulemaking'');
—Defense-in-depth is maintained;
—Sufficient safety margins are maintained;
—Proposed increases in risk, and their cumulative effect, are small and do not cause the NRC safety goals to be exceeded;
—Performance-based implementation and monitoring strategies are proposed that address uncertainties in analysis models and data and provide for timely feedback and corrective action.

These principles represent fundamental safety practices that the staff believes must be retained in any change to a plant's CLB to maintain reasonable assurance that there is no undue risk to public health and safety. Each of these principles is to be considered in the analysis and integrated decisionmaking process.

The guidelines for assessing risk proposed in the draft guide and draft SRP are derived from the Commission's safety goal quantitative health objectives (QHOs). Specifically, the subsidiary objectives of core damage frequency (CDF) and large early release frequency (LERF) are used as the measures of risk against which changes in the CLB will be assessed, in lieu of the QHOs themselves, which require level 3 PRA information (offsite health effects). These measures were chosen to simplify the scope of PRA analysis needed, to avoid the large uncertainties associated with level 3 PRA analysis, and to be consistent with previous Commission direction to decouple siting from plant design. These values are described in the June 25, 1997 **Federal Register** Notice (62 FR 34321) on ''Use of PRA in Plant Specific Reactor Regulatory Activities: Proposed Regulatory Guides, Standard Review Plan Sections, and Supporting NUREG.''

**IV. Comments**

The staff is soliciting comments related to the guidance described in the draft regulatory guide DG–1063 and SRP Section 3.9.8. Comments submitted by the readers of this FRN will help ensure that these draft documents have appropriate scope, depth, quality, and effectiveness. Alternative views, concerns, clarifications, and corrections expressed in public comments will be considered in developing the final documents.

**V. Workshop**

The Commission will conduct a workshop on November 19 and 20, 1997, to discuss and explain the material contained in the draft guide and SRP, and to answer questions and receive comments and feedback on the proposed documents. The purpose of the workshop is to facilitate the comment process. In the workshop, the staff will describe each document, its basis, and solicit comment and feedback on its completeness, correctness and usefulness. Since these documents cover a wide range of technical areas, many topics will be discussed. Listed below are topics on which discussion and feedback are sought at the workshop:

(A) Is the level of detail in the guidance contained in the proposed regulatory guide and SRP clear and sufficient, or is more detailed guidance necessary? What level of detail is needed.

(B) Is it acceptable to use qualitative information (e.g., not quantifying the change in risk—$\Delta$CDF and $\Delta$LERF) to propose changes in ISI programs? If so, does DG–1063 provide adequate guidance in this regard? Can qualitative assessments be used to identify and categorize piping segments as high, medium and low safety significant? How? What are the limitations of such an approach?

(C) Under the risk-informed approach, what is the appropriate size of the sample of welds or piping segment areas that should be inspected? What should the criteria be for selecting the sample size?

(D) How should welds or piping segment areas in the inspection sample be selected for inspection: randomly,

those most likely to experience degradation, or some combination of random and possible degradation? What would be the basis for the recommended selection process?

(E) Once selected, should the same welds or piping segment areas be inspected at each inspection interval or should different welds or piping segment areas be included in the sample? What would be the basis?

(F) DG–1063 proposes a method for meeting the criteria for acceptable safety and quality, as addressed in 10 CFR 50.55a(a)(3)(I). That method applies leak frequency target goals to maintain piping performance levels at or improved over the existing performance observed when implementing ASME Section XI requirements. Are there other acceptable risk-informed means by which to meet the criteria in 10 CFR 50.55a(a)(3)(I)?

(G) Should the scope of DG–1063 permit licensees to propose ISI changes to selected systems, in lieu of assessing the entire piping in the plant? For example, would it be acceptable for a licensee to limit its analysis to Class 1 piping (reactor coolant system piping) and not consider other piping in the plant? Such an analysis would not provide information required for categorizing piping in the plant and thereby grading the inspection based on plant risk. It would also discourage the use of risk-insights (e.g., PRA) to identify risk-significant piping within the plant. How can the concept of assessing risk in an integrated fashion be maintained if the scope were limited to one or a limited number of systems, such as Class 1 piping. What is gained by analyzing all the systems versus only selected systems? What is lost by minimizing the scope?

(H) The decision metrics described in Attachment 2 to DG–1063 identify a 2-by-2 matrix for identifying a graded approach to inspection based on risk and failure potential. Piping segments categorized as high-safety-significant and high-failure-potential receive more inspections than segments categorized as high-safety-significant and low-failure-potential. The number of inspections for the high-safety-significant and low-failure-potential segments is based on meeting target leak frequency goals and incorporates uncertainties in the probability of detection. What other methods are available to provide a comparable level of quality and safety? What are the technical bases for those other methods?

(I) How should the time dependence of degradation mechanisms be accounted for in selecting inspection intervals and categorizing the safety significance of pipe segments?

(J) On what basis could the requirement for ISI be eliminated? For example, if a detailed engineering analysis identifies a Class 1 or 2 piping segment as low-safety-significant and low-failure-potential, is it acceptable to eliminate the requirement for ISI or should a Class 1 or a 2 pipe segment be considered part of the defense-in-depth consideration and be required to have some level of inspection regardless of its categorization as low-safety-significant and low-failure potential? If yes, why? If not, why not?

(K) Are data bases available on degradation mechanisms and consequences of piping failures? Is data available to identify the secondary effects that can result from a pipe break, such as high-energy pipe whip damaging other piping and components in the vicinity of the break? What are the industry's plans for developing and maintaining an up-to-date data base on plant piping performance? Should a commitment to develop and maintain such a data base be required for a RI–ISI program? How could it be ensured that the data base is maintained?

(L) Does the application of the Perdue-Abramson model (DG–1063, Attachment 4), with the use of the decision metrics and leak frequency goals (DG–1063, Attachment 2) provide an alternative acceptable level of quality and safety as required by 10 CFR 50.55a(a)(3)(I)? Alternatively, should there be a leak frequency goal independent of core damage frequency goal, as a measure of defense in depth?

(M) Is the guidance proposed by the staff for finding a fracture mechanics computer model acceptable for use in RI–ISI programs clear and adequate? If not, what is missing?

(N) Is the guidance on risk categorization clear and sufficient, or is additional guidance needed? What additional guidance is needed?

(O) Table A5.1, in DG–1063, identifies a proposed checklist that could assist in identifying potential locations for various degradation mechanisms in a pipe. Is this checklist complete? What additional information could enhance the usefulness of such a check list?

*Workshop Meeting Information*

A 2-day workshop will be held to obtain public comment on the subject draft Regulatory Guide (DG–1063) and the accompanying draft standard review plan (Section 3.9.8), and to respond to questions. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Jack Guttmann, U.S. Nuclear Regulatory Commission, MS T10E50, phone (301) 415–7732, e-mail jxg@nrc.gov. Comments on the regulatory guidance and standard review plan documents for discussion at the workshop should be submitted in writing and in electronic mail (JXG@nrc.gov) in WordPerfect 5 or 6.1 compatible format.

*Date:* November 19–20, 1997.

*Agenda:* Preliminary agenda is as follows: (A final agenda will be available at the workshop.).

*Tuesday, November 18, 1997*

Time—3:00 pm to 7:00 pm. Registration.

*Wednesday, November 19, 1997*

Time—7:00 am to 4:00 pm. Registration.

Session 1: (Morning 11/19/97—8:00 am–11:30 am)

Overview by NRC management of the draft regulatory guide and standard review plan, followed by NRC staff presentation on the draft documents (DG–1063 and SRP Section 3.9.8).

Lunch: 11:30 am—1:00 pm.

Session 2: (Afternoon 11/19/97—1:00 pm–5:00 pm)

Public/Industry presentations on issues and recommendations for the general guidance documents, followed by open discussions.

*Friday, November 20, 1997*

Session 3: (Morning 11/20/97—8:00 am–11:30 pm)

Open discussion of issues.

Session 4: (Afternoon 11/20/97—1:00 pm–3:00 pm)

Overview of comments, issues and resolution options identified in the sessions. Concluding remarks and near-term plans will be covered by the staff.

*Location:* Bethesda, Maryland.

*Hotel:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland, (301) 897–9400.

*Registration:* There is no registration fee for this workshop. However, we request that interested parties register in writing to Kesselman-Jones, 8912 James Ave., NE., Albuquerque, New Mexico 87111 their intent on participating in the workshop. Please include name, organization, address and phone number with your registration request. Notification of attendance (e.g., pre-registration) is requested so that adequate space, etc. for the workshop can be arranged. Questions regarding meeting registration or fees should be directed to Kesselman-Jones, Phone (505) 271–0003, fax (505) 271–0482, e-mail kessjones@aol.com.

**VI. Regulatory Analysis**

*1. Statement of the Problem*

During the past several years, both the Commission and the nuclear industry have recognized that probabilistic risk assessment (PRA) has evolved to the point that it can be used increasingly as a tool in regulatory decisionmaking. In August 1995 the Commission published a policy statement that articulated the view that increased use of PRA technology would (1) enhance regulatory decisionmaking, (2) allow for a more efficient use of agency resources, and (3) allow a reduction in unnecessary burdens on licensees. In order for this change in regulatory approach to occur, guidance must be developed describing acceptable means for increasing the use of PRA information in the regulation of nuclear power reactors.

*2. Objective*

To provide guidance to power reactor licensees and NRC staff reviewers on acceptable approaches for utilizing risk information (PRA) to support requests for changes in a plant's current licensing basis (CLB). It is intended that the changes in regulatory approach addressed by this guidance should allow a focussing of both industry and NRC staff resources on the most important regulatory areas while providing for a reduction in burden on the resources of licensees. Specifically, guidance is to be provided in several areas that have been identified as having potential for this application. This application includes risk-informed inservice inspection programs of piping.

*3. Alternatives*

The increased use of PRA information as described in the draft regulatory guide being developed for this purpose is voluntary. Licensees can continue to operate their plants under the existing procedures defined in their CLB. It is expected that licensees will choose to make changes in their current licensing bases to use the new approaches described in the draft regulatory guide only if it is perceived to be to their benefit to do so.

*4. Consequences*

Acceptance guidelines included in the draft regulatory guide state that only small increases in overall risk are to be allowed under the risk-informed program. Reducing the inspection frequency of piping identified to represent low risk and low failure potential as provided for under this program is an example of a potential contributor to a small increase in plant risk. However, the program also requires increased emphasis on piping categorized as high-safety-significant and high-failure-potential that may not be inspected under current programs. This is an example of a potential contributor to decreases in plant risk. An improved prioritization of industry and NRC staff resources, such that the most important areas associated with plant safety receive increased attention, should result in a corresponding contributor to a reduction in risk. Some of the possible impacts on plant risk cannot be readily quantified using present PRA techniques and must be evaluated qualitatively. The staff believes that the net effect of the risk changes associated with the risk-informed programs, as allowed using the guidelines in the draft regulatory guide, should result in a very small increase in risk, maintain a risk-neutral condition, or result in a net risk reduction in some cases.

*5. Decision Rationale*

It is believed that the changes in regulatory approach provided for in the draft regulatory guide being developed will result in a significant improvement in the allocation of resources both for the NRC and for the industry. At the same time, it is believed that this program can be implemented while maintaining an adequate level of safety at the plants that choose to implement risk-informed programs.

*6. Implementation*

It is intended that the risk-informed regulatory guide on inservice inspection of piping (DG–1063) be published by early to mid CY 1998.

Dated at Rockville, Maryland, this 8th day of October 1997.

For the Nuclear Regulatory Commission.

**Mark A. Cunningham,**

*Chief, Probabilistic Risk Analysis Branch.*

[FR Doc. 97–27235 Filed 10–14–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR WASTE TECHNICAL REVIEW BOARD

### Panel Meeting: November 19–20, 1997—Arlington, Virginia: Spent Nuclear Fuel Transportation Safety

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on the Waste Management System will hold a meeting November 19–20, 1997, beginning at 8:30 a.m. The meeting, which is open to the public, will focus on transportation safety issues for spent nuclear fuel.

The first day will include presentations on the federal regulatory framework under which transportation will take place, transportation planning and practices (using a specific example), and risk analysis (with emphasis on methodologies). Representatives from the Department of Transportation, the Nuclear Regulatory Commission, Sandia National Laboratories, and Lawrence Livermore National Laboratory have been invited to make the presentations, along with several private consultants. On the second day, the presenters will participate in a round-table discussion of their topics. Representatives of the state of Nevada, the environmental community, the Department of Energy, and other stakeholder groups also will participate. The meeting will end around noon. A detailed agenda will be available approximately two weeks prior to the meeting by fax or email, or on the Board's web site at www.nwtrb.gov.

The meeting will be held at the Sheraton national Hotel, Columbia Pike & Washington Boulevard, Arlington, Virginia 22204; (Tel) 703–521–1900; (Fax) 703–521–0332. Reservations for accommodations must be made by October 17, 1997, and you must indicate that you are attending the Nuclear Waste Technical Review Board's panel meeting to receive the preferred rate.

Time has been set aside on the agenda for comments and questions from the public. Those wishing to speak are encouraged to sign the Public Comment Register at the check-in table. A time limit may have to be set on the length of individual remarks; however, written comments of any length may be submitted for the record.

Transcripts of this meeting will be available on computer disk, via e-mail, or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning December 18, 1997. For further information, contact Frank Randall, External Affairs, 2300 Clarendon Blvd., Suite 1300, Arlington, Virginia 22201–3367; (Tel) 703–235–4473; (Fax) 703–235–4495; (E-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and commercial spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as

a potential location for a permanent repository for the disposal of that waste.

Dated: October 8, 1997.

**William Barnard,**

*Executive Director, Nuclear Waste Technical Review Board.*

[FR Doc. 97–27256 Filed 10–14–97; 8:45 am]

BILLING CODE 6820–AM–M

## PENSION BENEFIT GUARANTY CORPORATION

### Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

**DATES:** The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in October 1997. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in November 1997. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the fourth quarter (October through December) of 1997.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

**SUPPLEMENTARY INFORMATION:**

### Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the ''applicable percentage'' (described in the statute and the regulation) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

For plan years beginning before July 1, 1997, the applicable percentage of the 30-year Treasury yield was 80 percent. The Retirement Protection Act of 1994 (RPA) amended ERISA section 4006(a)(3)(E)(iii)(II) to provide that the applicable percentage is 85 percent for plan years beginning on or after July 1, 1997, through (at least) plan years beginning before January 1, 2000.

However, under section 774(c) of the RPA, the application of the amendment is deferred for certain regulated public utility (RPU) plans for as long as six months. The applicable percentage for RPU plans will therefore remain 80 percent for plan years beginning before January 1, 1998. (The rules governing the applicable percentages for ''partial'' RPU plans are described in § 4006.5(g) of the premium rates regulation.)

For plans for which the applicable percentage is 85 percent, the assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in October 1997 is 5.53 percent (*i.e.,* 85 percent of the 6.50% percent yield figure for September 1997).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between November 1996 and October 1997. The rates for July through October 1997 in the table reflect an applicable percentage of 85 percent and thus apply only to non-RPU plans. However, the rates for months before July 1997, which reflect an applicable percentage of 80 percent, apply to RPU (and ''partial'' RPU) plans as well as to non-RPU plans.

| For premium payment years beginning in: | The assumed interest rate is— |
|---|---|
| November 1996 | 5.45 |
| December 1996 | 5.18 |
| January 1997 | 5.24 |
| February 1997 | 5.46 |
| March 1997 | 5.35 |
| April 1997 | 5.54 |
| May 1997 | 5.67 |
| June 1997 | 5.55 |
| July 1997 | 5.75 |
| August 1997 | 5.53 |
| September 1997 | 5.59 |
| October 1997 | 5.53 |

For premium payment years beginning in October 1997, the assumed interest rate to be used in determining variable-rate premiums for RPU plans (determined using an applicable percentage of 80 percent) is 5.20 percent. For ''partial'' RPU plans, the assumed interest rates to be used in determining variable-rate premiums can be computed by applying the rules in § 4006.5(g) of the premium rates regulation. The PBGC's premium payment instruction booklet also describes these rules and provides a worksheet for computing the assumed rate.

### Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the fourth quarter (October through December) of 1997, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

| From— | Through— | Interest rate (percent) |
|---|---|---|
| 4/1/91 | 12/31/91 | 10 |
| 1/1/92 | 3/31/92 | 9 |
| 4/1/92 | 9/30/92 | 8 |
| 10/1/92 | 6/30/94 | 7 |
| 7/1/94 | 9/30/94 | 8 |

| From— | Through— | Interest rate (percent) |
|---|---|---|
| 10/1/94 | 3/31/95 | 9 |
| 4/1/95 | 6/30/95 | 10 |
| 7/1/95 | 3/31/96 | 9 |
| 4/1/96 | 6/30/96 | 8 |
| 7/1/96 | 12/31/96 | 9 |
| 1/1/97 | 3/31/97 | 9 |
| 4/1/97 | 6/30/97 | 9 |
| 7/1/97 | 9/30/97 | 9 |
| 10/1/97 | 12/31/97 | 9 |

**Underpayments and Overpayments of Multiemployer Withdrawal Liability**

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the fourth quarter (October through December) of 1997 (*i.e.*, the rate reported for September 15, 1997) is 8.50 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

| From— | Through— | Rate (percent) |
|---|---|---|
| 10/1/91 | 12/31/91 | 8.00 |
| 1/1/92 | 3/31/92 | 7.50 |
| 4/1/92 | 9/30/92 | 6.50 |
| 10/1/92 | 6/30/94 | 6.00 |
| 7/1/94 | 9/30/94 | 7.25 |
| 10/1/94 | 12/31/94 | 7.75 |
| 1/1/95 | 3/31/95 | 8.50 |
| 4/1/95 | 9/30/95 | 9.00 |
| 10/1/95 | 3/31/96 | 8.75 |
| 4/1/96 | 12/31/96 | 8.25 |
| 1/1/97 | 3/31/97 | 8.25 |
| 4/1/97 | 6/30/97 | 8.25 |
| 7/1/97 | 9/30/97 | 8.50 |
| 10/1/97 | 12/31/97 | 8.50 |

**Multiemployer Plan Valuations Following Mass Withdrawal**

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in November 1997 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of October 1997.

**David M. Strauss,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 97–27272 Filed 10–14–97; 8:45 am]

BILLING CODE 7708–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22842; 812–10582]**

## Sierra Asset Management Portfolios, et al.; Notice of Application

October 7, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'' or ''Commission'').

**ACTION:** Notice of application under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1) (A) and (C) and 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would amend a prior order [1] (the ''Prior Order'') to permit a ''fund of funds'' that is an open-end investment company to invest in shares of an affiliated closed-end investment company.

**APPLICANTS:** Sierra Asset Management Portfolios (the ''Trust''), Sierra Prime Income Fund (''SPIF''), Sierra Investment Advisors Corporation (''Sierra Advisors''), and Sierra Investment Services Corporation (''Sierra Services''), including each applicant's successor in interest.[2]

**FILING DATES:** The application was filed on March 19, 1997 and amended on July 21, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 29, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 9301 Corbin Avenue, Suite 333, Northridge, California 91324.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

**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, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

**Applicants' Representations**

1. The Trust is registered under the Act as an open-end management investment company and consists of five portfolios (the ''SAM Portfolios'').[3] Each SAM Portfolio operates as a ''fund of funds'' under the Prior Order and invests substantially all of its assets in shares of various portfolios of Sierra Trust Funds. Sierra Trust Funds is a registered open-end management investment company comprised of sixteen portfolios (the ''Underlying Funds'') that is part of the ''same group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the SAM Portfolios. Each SAM Portfolio also invests in other securities. Each SAM Portfolio seeks to provide diversification among major asset categories and stock and bond sub-categories. Certain of the SAM Portfolios are designed to provide exposure in varying degrees to the growth potential of the stock market and/or the income potential of the bond market.

2. Applicants seek to amend the Prior Order to permit the SAM Portfolios to acquire up to 100% of SPIF's shares. Applicants request that relief be extended to any registered open-end management investment company, or

[1] *Sierra Asset Management Trust, et al.*, Investment Company Act Release Nos. 22001 (June 3, 1996) (notice) and 22047 (June 28, 1996) (order).

[2] ''Successor in interest'' is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] The Trust was initially organized as the ''Sierra Asset Management Trust,'' but changed its name on July 19, 1996, prior to the Trust's registration statement becoming effective.

series thereof, for which Sierra Services or any entity controlling, controlled by, or under common control with Sierra Services, now or in the future acts as investment adviser or principal underwriter (the ''Funds'').[4]

3. SPIF is registered under the Act as a non-diversified closed-end fund. SPIF seeks to provide a high level of current income, consistent with preservation of capital, through investments primarily in senior collateralized loans made by banks or other financial institutions to U.S. corporations, partnerships, and other entities. The loans generally are expected to pay interest at rates that float or reset at a margin above a generally recognized base lending rate and, in addition, have a dollar-weighted average maturity of ninety days or less. As a result, the net asset value (''NAV'') of SPIF's shares has remained, and is expected to remain, relatively stable. Sierra Services has determined that SPIF's investment objective and policies make it an appropriate investment for four of the five SAM Portfolios. (It is not presently intended that the other portfolio will invest in shares of SPIF.)

4. Sierra Services is an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and a broker-dealer registered under the Securities Exchange Act of 1934. Sierra Services serves as the principal underwriter/distributor of the SAM Portfolios and SPIF. Sierra Services also serves as the SAM Portfolios' investment adviser, for which it receives payment equal to 0.15% of each SAM Portfolio's average net assets. Sierra Advisors is an investment adviser registered under the Advisers Act and provides overall investment management services to SPIF, for which it receives payment equal to .95% of SPIF's assets. Sierra Advisors and Sierra Services are wholly-owned subsidiaries of Sierra Capital Management Corporation, which in turn is a wholly-owned subsidiary of Washington Mutual, Inc. Van Kampen American Capital Management, Inc. (''VKM'') is an investment adviser registered under the Advisers Act and manages SPIF's investment portfolio on a day-to-day basis.

5. The SAM Portfolios currently offer two classes of shares, class A shares and class B shares. Class A shares are subject to a maximum front-end sales charge that ranges from 4.50% to 5.75%. Purchases of $1 million or more and certain other purchases are not subject to a front-end sales charge but may be subject to a contingent deferred sales charge (''CDSC'') of up to 1.00%. Class A shares also are subject to a 0.25% asset-based sales charge. Class B shares are subject to a maximum CDSC of 5%, a 0.75% asset-based sales charge, and a 0.25% shareholder servicing fee.

6. SPIF currently offers a single class of shares that carry a maximum 4.5% front-end sales charge.[5] SPIF has received an order of the Commission permitting it to offer additional classes of shares subject to differing sales charge structures (the ''Multi-Class Order'').[6] The sales charges would include front-end sales charges, early withdrawal charges that are analogous to CDSCs and that comply in substance with the terms of rule 6c–10 under the Act, and asset-based distribution fees that comply with the terms of rule 12b–1 under the Act. In addition, under the Multi-Class Order, SPIF has agreed to comply with the terms of rule 18f–3 under the Act. SPIF also has agreed to treat all sales-related compensation as sales charges subject to the terms of rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD'').

7. SPIF's shares are offered to the public on a continuous basis pursuant to rule 415 under the Securities Act of 1933. Unlike most closed-end funds, SPIF's shares are not listed on an exchange or traded over-the-counter. No secondary market exists for SPIF's shares, and none is expected to develop in the future. SPIF has made, and intends to continue to make, pursuant to section 23(c)(2) of the Act, quarterly tender offers to repurchase a specified percentage of its outstanding shares for cash at NAV, subject to approval by SPIF's board of trustees (the ''Tender Privilege'').

8. Under the Tender Privilege, absent an early withdrawal charge, SPIF shareholders receive cash in an amount equal to the NAV of their shares as determined by State Street Bank & Trust Company at the close of business on the date that the Tender Privilege terminates. SPIF shareholders who do not wish to receive cash under the Tender Privilege may instead elect to exchange their shares (the ''Exchange Privilege'') for shares of the Sierra Trust Funds or the SAM Portfolios. SPIF has informed investors in its promotional materials that there can be no assurance that the Tender and Exchange Privileges will be offered every quarter, or if completed, that they will provide sufficient liquidity for all shareholders who wish to dispose of their SPIF shares.

9. Sierra Services acknowledges that SPIF shares will be deemed illiquid securities unless determined otherwise by the Trust's board of trustees, and that any purchase of SPIF shares by a SAM Portfolio will comply with the SEC rules, regulations, and staff positions concerning the liquidity of an open-end fund's portfolio. The Trust acknowledges that the periodic tender offers do not by themselves provide a basis for determining that the SPIF shares are liquid.

**Applicants' Legal Analysis**

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if the securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. The purpose of section 12(d)(1)(A) was to address the perceived adverse consequences of ''pyramiding'' of investment companies in a fund of funds arrangement, including duplicative costs, the exercise of undue influence or control over the underlying fund, and the potential adverse impact of large-scale redemptions.

2. Section 12(d)(1)(C) provides that no registered investment company may acquire securities of a registered closed-end company if the acquiring company, together with any other investment companies advised by the investment adviser, own more than 10% of the closed-end fund's outstanding voting securities. Applicants state that there were no additional concerns underlying section 12(d)(1)(C); rather, section 12(d)(1)(C) was intended to relax the section 12(d)(1)(A) prohibitions to accommodate fund industry difficulties associated with monitoring the acquisition of closed-end fund shares.

3. Applicants request relief from the limitations of sections 12(d)(1) (A) and (C) to the extent necessary to permit each individual SAM Portfolio to invest more than 5% of its assets in SPIF and acquire more than 3% of SPIF's shares.

4. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent the exemption is consistent with the public interest and the protection of investors. For the reasons below, applicants assert that the

[4] All investment companies that presently intend to rely on the requested order are named as applicants.

[5] Shares of SPIF would be sold to the SAM Portfolios without imposition of a sales charge.

[6] *Sierra Prime Income Fund, et al.* Investment Company Act Release Nos. 22512 (Feb. 14, 1997) (notice) and 22556 (March 12, 1997) (order).

proposal meets the requirements of section 12(d)(1)(J).

5. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to the securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are limited; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1) (F) or (G).

6. Applicants may not rely on section 12(d)(1)(G) because the SAM Portfolios will, in addition to investing directly in portfolio securities as permitted by the Prior Order, be investing in shares of SPIF, a closed-end fund. However, applicants believe that exemptive relief to permit investments by the SAM Portfolios in shares of SPIF is appropriate because SPIF will operate in a manner substantially similar to an open-end fund. Applicants state that operational similarities between SPIF and an open-end fund include the following: (a) Share offerings on a continuous basis at a price equal to their NAV, plus any applicable sales charges; (b) daily pricing of shares that substantially complies with rule 22c–1 under the Act; and (c) procedures that permit investors to tender their shares for cash in an amount equal to their NAV.

7. Applicants assert that permitting the SAM Portfolios to invest in SPIF would not raise the concerns underlying sections 12(d)(1)(A) and (C). Applicants believe that the proposal will not raise the concern that investors will be subject to two layers of advisory fees. Applicants state that, before approving any advisory contract under section 15 of the Act, the trustees of the Trust, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, will find that any advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any advisory contract with an Underlying Fund or SPIF. Applicants also note that the advisory fees charged to the Trust are, in essence, for asset allocation, while the Underlying Funds' and SPIF's advisory fees relate to the selection and disposition of specific securities.

8. Applicants assert that the proposal will not involve layering of sales charges. Applicants state that, as a condition to the requested relief, any sales charges or distribution or service fees relating to the shares of a SAM Portfolio will not exceed the limits set forth in rule 2830 of the Conduct Rules of the NASD when aggregated with any sales charges or distribution or service fees that the SAM Portfolio may pay relating to the acquisition, holding, or disposition of shares of the Underlying Funds or SPIF.

9. Applicants state that administrative and similar fees may be charged at the Trust and Underlying Fund and SPIF levels. However, applicants believe that overall administrative and other expenses may be reduced at each individual level under the proposed arrangement.

10. Applicants contend that the threat of large scale redemptions is minimized in the proposed structure. Applicants assert that the SAM Portfolios are designed for long-term investors, which reduces the possibility that the SAM Portfolios will be used as short-term trading vehicles and further protects the SAM Portfolios, the Underlying Funds, and SPIF from unexpected large redemptions.

11. Applicants state that an additional concern underlying section 12(d)(1) is the creation of overly complex investment vehicles. Applicants state that these concerns are addresses by the fact that no Underlying Fund or SPIF will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

12. Section 17(a) generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. The Trust and SPIF may be considered affiliated persons by virtue of being under common control of Sierra Capital Management Corporation. They also many be deemed to be affiliated persons to the extent that a SAM Portfolio may own 5% or more of SPIF's shares. Accordingly, applicants request relief to permit SPIF to sell its shares to and repurchase its shares from the SAM Portfolios.

13. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if the 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.

14. Section 17(b) provides that the SEC will exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants request an exemption under sections 6 (c) and 17 (b) and state that relief is appropriate for the reasons discussed below.

15. Applicants believe that the terms of the proposed arrangement are reasonable and fair and do not involve overreaching because the consideration paid for the sale and repurchase of shares of SPIF will be based on the NAV of SPIF. Applicants represent that VKM, an entity that is not an affiliated person of Sierra Services, will provide pricing recommendations to Sierra Advisors concerning SPIF's portfolio securities. Sierra Advisors will then provide pricing information, based on the recommendations received from VKM, to State Street Bank & Trust Company to determine the NAV of SPIF's shares, subject to procedures that SPIF's board of trustees have established and monitor on a periodic basis. Sales and repurchases from all investors will be based on the NAV so determined.

16. Applicants state that the proposed arrangement will be consistent with the policies of each Fund and SPIF. The investment of assets of the Funds in shares of SPIF and the issuance of shares of SPIF to the Funds will be effected in accordance with the investment restrictions of each Fund and SPIF and will be consistent with the policies as set forth in the registration statement of each Fund and SPIF. Applicants also believe that the proposed arrangement is consistent with the general purposes of the Act.

**Applicants' Conditions**

Applicants agree that the order granting the requested relief shall be subject to the following conditions, which supersede the conditions to the Prior Order:

1. A Fund may purchase shares of SPIF so long as shares of SPIF are continuously offered to the Funds at NAV, and SPIF continues to offer the Tender Privilege.

2. Neither the Underlying Funds nor SPIF (collectively, the ''New Underlying Funds'') will acquire securities of any other investment company in excess of

the limits contained in section 12(d)(1)(A) of the Act.

3. Before approving any advisory contract under section 15 of the Act, the board of trustees of a Fund, including a majority of the trustees who are not ''interested persons'' of the Fund as defined in section 2(a)(19) of the Act, will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any New Underlying Fund advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

4. Any sales charges or distribution or service-related fees charged with respect to shares of a Fund, when aggregated with any sales charges or distribution or service-related fees paid by the Fund with respect to the shares of any New Underlying Fund, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

5. Each Fund and each New Underlying Fund will be part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27171 Filed 10–14–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [To be Published].

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** To be Published.

**CHANGE IN THE MEETING:** Time Change.

The time for the closed meeting scheduled for Tuesday, October 14, 1997, at 10:30 a.m., has been changed to 11:00 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942–7070.

Dated: October 9, 1997.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 97–27436 Filed 10–10–97; 12:17 pm]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39219; File No. SR–CBOE–97–51]**

October 8, 1997.

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Gratuities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 4.4 (''Rule'') governing gratuities. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed change to Rule 4.4 is to increase the dollar value, from $50.00 to $100.00, of gratuities or compensation that may be given in any one year by an Exchange member to an Exchange employee without the prior consent of the Exchange. Gratuities are gifts of any kind, including, but not limited to, cash. Gratuities or compensation in an amount less than those specified in the Rule do not require any prior consent.

Currently, pursuant to Rule 4.4, the amount permitted under the Rule to be given by a CBOE member to an employee of any other member or of any non-member broker, dealer, bank or institution, without the prior consent of the employer and of the Exchange is $100, and the amount permitted to be given by a CBOE member to an Exchange employee without prior Exchange permission is $50. The CBOE proposes to increase the amount permitted to be given by a CBOE member to an Exchange employee from $50 to $100. The purpose of this change is to account for inflation that has occurred since the $50 amount was established in 1980.

Also, the rule language is being revised to clarify that Exchange consent is required if a member wants to give a gratuity of over $100 to an Exchange employee. The Exchange proposes to change the current construction of the Rule in order to clarify that the final phrase requiring consent refers to both Exchange employees, as well as employees of any other member or of any non-member broker, dealer, bank or institution.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[3] in that it promotes just and equitable principles of trade, fosters cooperation among persons engaged in facilitating securities transactions, and protects investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[3] 15 U.S.C. § 78f(b).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. In addition, the Commission encourages commenters to consider whether: (1) The acceptance of cash or its equivalent should be permitted in any circumstance; (2) there are presently adequate safeguards against the solicitation of gratuities; and (3) all offers of gratuities, whether accepted or not, should be recorded in a timely manner by the employee, and such records should be maintained by his employer. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–51 and should be submitted by November 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[4] 17 CFR 200.20–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27282 Filed 10–14–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39216; File No. SR-NASD–97–72]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Extension of the Nasdaq International Service Pilot Program

October 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 30, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties and approving this proposal on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD proposes to extent for one year, until October 9, 1998: (1) The pilot term of the Nasdaq International Service (''Service''); and (2) the effectiveness of certain rules (''International Rules'') that are unique to the Service. The proposal does not entail any modification of the International Rules. The present authorization for the Service and the International Rules expires on October 11, 1997.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1)(1988).

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The NASD proposes to extend for one year, until October 9, 1998, the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The existing pilot operation of the Service and the International Rules was originally authorized by the Commission in October 1991[2] and the Service was launched on January 20, 1992. The pilot has since been extended[3] and is set to expire on October 11, 1997.[4]

The Service supports an early trading session running from 3:30 a.m. to 9:00 a.m. Eastern Time (''ET'') on each U.S. business day (''European Session'') that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. The Service also has a variable opening feature that permits Service market makers to elect to participate starting from 3:30 a.m., 5:30 a.m., or 7:30 a.m. ET. The election is required to be made on a security-by-security basis at the time a firm registers with the NASD as a Service market maker.[5] At present, there are no Service market makers participating in the Service.

As noted above, the NASD is seeking to extend the pilot term for one year. During this period, the NASD will continue to evaluate the Service's operation and consider possible enhancements to the Service to broaden

[2] *See* Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52082 (October 17, 1991) (order approving File No. SR–NASD–90–33) (''Pilot Approval Order'').

[3] *See* Securities Exchange Act Release No. 33037 (October 8, 1993), 58 FR 53752 (October 18, 1993) (order approving File No. SR–NASD–93–50) (extending the pilot operation of the Service for two years through October 11, 1995).

[4] *See* Securities Exchange Act Release No. 36359 (October 11, 1995), 60 FR 53820 (October 17, 1995) (order approving File No. SR–NASD–95–46) (extending the pilot operation of the Service for two years through October 11, 1997).

[5] Regardless of the opening time chosen by the Service market maker, the Service market marker is required to fulfill all of the obligations of a Service market maker from that time (*i.e.*, 3:30 a.m., 5:30 a.m., or 7:30 a.m. ET) until the European Session closes at 9:00 a.m. ET. *See* Securities Exchange Act Release No. 32471 (June 16, 1993), 58 FR (June 22, 1993) (order approving File No. SR–NASD–92–54).

market marker participation. The NASD views the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by the Nasdaq Stock Market, Inc. (''Nasdaq''). Accordingly, The NASD believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community.[6] The NASD believes it is extremely important to preserve this facility and the opportunities it provides, especially in light of the increasingly global nature of the securities markets and the trend of cross-border transactions generally.

In addition, the Service serves an invaluable role as a critical early warning mechanism in the context of significant changes involving Nasdaq software and hardware systems. Specifically, because the Service operates in the early morning hours prior to the opening of trading in the domestic session of Nasdaq, the Service has provided for the early detection of systems or communications problems when Nasdaq implements these systems changes.

The NASD believes that the proposed rule change is consistent with Sections 11A(a)(1) (B) and (C) and 15A(b)(6) of the Act. Subsections (B) and (C) of Section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The NASD believes that the proposed extension of the Service and the International Rules is fully consistent with these statutory provisions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither solicited nor received.

## III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The NASD has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act so that the operation of the pilot program for the Service may continue on an uninterrupted basis. In addition, as noted above, the NASD's proposal entails no modification to the International Rules or the Service, which previously were subject to the full notice comment period required by Section 19(b) of the Act when they were approved originally by the Commission. Accordingly, the NASD believes good cause exists to extend the effectiveness of the pilot program for the Service on an accelerated basis.

The Commission finds that the proposed rule change is consistent with sections 11A(a)(1) (B) and (C) and 15A(b)(6) of the Act. Sections 11A(a)(1) (B) and (C) of the act set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

The Commission continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by Nasdaq. Although there are no market makers participating currently in the Service, the NASD plans to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market maker participation. In addition, the NASD has stated that the Service has played a valuable role by providing for the early detection of systems or communications problems when Nasdaq implements significant changes in its hardware and software systems. Accordingly, the Commission believes that the pilot program warrants an extension to permit possible enhancements that will increase the Service's utility to the investment community.[7] The NASD must file any changes to the operation of the Service with the Commission pursuant to Section 19(b)(2) of the Act.

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 order to ensure the continuous operation of the Service through October 9, 1998. The current authorization for the Service expires on October 11, 1997.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–72 and should be submitted by November 5, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–97–72) is approved through October 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27280 Filed 10–14–97; 8:45 am]

**BILLING CODE 8010–01–M**

[6] Assuming that the pilot term is extended, the NASD will continue to supply the Commission with the statistical report prescribed in the initial Pilot Approval Order for the Service at six-month intervals.

[7] The NASD continues to be responsible for supplying the Commission with the statistical reports prescribed in the initial Pilot Approval Order at six-month intervals. However, the supporting documentation is no longer required, unless otherwise requested by the Commission.

[8] 15 U.S.C. § 78f(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39218; File No. SR–NASD–97–04]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Its Rules Governing Excused Market Maker Withdrawals and Market Maker Reinstatements

October 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] notice is hereby given that on January 24, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On September 30, 1997, the NASD submitted an amendment (''Amendment No. 1'') to the proposed rule change to make technical amendments to the text of the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its rules governing excused market maker withdrawals and the voluntary termination of market maker registrations. The proposed rule changes also would amend the NASD's rules governing the reinstatement of market makers that have been ''SOESed out of the Box'' or have accidentally withdrawn from a security. The text of the proposed rule changes are as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

### 4619. Withdrawal of Quotations and Passive Market Making

(a) A market maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact Nasdaq *Market* Operations to obtain excused withdrawal status prior to withdrawing its quotations *or identification as a passive market maker.* Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq Market Operations only upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on [physical] circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq *Market* Operations. Excused withdrawal status [or passive market maker status] based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if *written* notice is received by the Association [five] *one* business day[s] in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if:

(1) the *written* request for withdrawal is received by the Association [twenty (20)] *one* business day[s] in advance, and is approved by the Association;

(2) the request includes a list of the securities for which withdrawal is requested; and

(3) the request is made by a market maker with three (3) or fewer Nasdaq level 3 terminals. Excused withdrawal status may be granted to a market maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611, above, provided the market maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(c)–(d) No changes.

(*e*) *The Market Operations Review Committee shall have jurisdiction over proceedings brought by Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule 4619, or the conditions imposed on their reentry.*

### 4620. Voluntary Termination of Registration

(*a*) A market maker may voluntarily terminate its registration in a security by withdrawing its quotations from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from SOES participation as a market maker in a Nasdaq National Market security shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq National Market issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

*(b) Notwithstanding the above, a market maker that accidentally withdraws as a market maker may be reinstated if;*

*(1) the market maker notified Market Operations of the accidental withdrawal as soon as practicable under the circumstances, but within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;*

*(2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and*

*(3) the market maker's firm would not exceed the following reinstatement limitations:*

*(A) for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than two (2) reinstatements per year;*

*(B) for firms that simultaneously made markets in more than 250 but less than 500 stocks during the previous calendar year, the firm can receive no more than three (3) reinstatements per year; and*

*(C) for firms that simultaneously made markets in more than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year.*

*(c) Factors that the Association will consider in granting a reinstatement under paragraph (b) of this rule include, but are not be limited to:*

*(1) the number of accidental withdrawals by the market maker in the past, as compared with market makers*

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[1] 15 U.S.C. § 78s(b)(1).

[2] *See* Letter from Robert E. Aber, Vice President and General Counsel, NASDAQ, to Katherine England, Assistant Director, Division of Market Regulation, Securities and Exchange Commission (September 29, 1997).

*making markets in a comparable number of stocks;*

*(2) the similarity between the symbol of the stock that the market maker intended to withdraw from and the symbol of the stock that the market maker actually withdrew from;*

*(3) (market conditions at the time of the withdrawal;*

*(4) whether, given the market conditions at the time of the withdrawal, the withdrawal served to reduce the exposure of the member's position in the security at the time of the withdrawal to market risk; and*

*(5) the timeliness with which the market maker notified Market Operations of the error.*

*(d) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Market Makers seeking review of their denial of a reinstatement pursuant to paragraph (b) above.*

* * * * *

**4730. Participant Obligations in SOES**

* * * * *

(b)(6) In the case of an NNM security, a Market Maker will be suspended from SOES if its bid or offer has been decremented to zero due to SOES executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. A Market Maker that fails to re-enter a two-sided quotation in a NNM security within the allotted time will be deemed to have withdrawn as a Market Maker (*''SOESed out of the Box''*). except as provided *below in this subparagraph and* in subparagraph (7) [below], a Market Maker that withdraws in an NNM security may not reenter SOES as a Market Maker in that security for twenty (20) business days.

*(A) Notwithstanding the above, a market maker can be reinstated if:*

*(i) the market maker makes a request for reinstatement to Market Operations as soon as practicable under the circumstances, but within at least one hour of having been SOESed out of the Box, and immediately thereafter provides written notification of the reinstatement request;*

*(ii) it was a Primary Market Maker at the time it was SOESed out of the Box;*

*(iii) the market maker's firm would not exceed the following reinstatement limitations;*

*a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;*

*b. for firms that simultaneously made markets in more than 250 but less than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year;*

*c. for firms that simultaneously made markets in more than 500 stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and*

*(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:*

*a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time of the SOES exposure limit exhaustion;*

*b. the frequency with which the firm has been SOESed out of the Box in the past;*

*c. Procedures the firm has adopted to avoid being inadvertently SOESed out of the Box; and*

*d. the length of time before the market maker sought reinstatement.*

*(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:*

*(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq;*

*(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or*

*(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently SOESed out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.*

* * * * *

(b)(8) [The Rule 9700 Series of the Code of Procedure] *The Market Operations Review Committee* shall [apply to] *have jurisdiction over* proceedings brought by Market Makers seeking review of [(A)] their removal from SOES pursuant to subparagraphs (6) *or (7)* above [, (B) the denial of an excused withdrawal pursuant to Rule 4619, or (C) the conditions imposed on their reentry].

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In order to ensure that markt makers are complying with their obligation to make continuous, firm two-sided markets, NASD Rule 4620 provides that market makers who voluntarily withdraw from an issue cannot re-register in that issue for 20 business days. This rule is commonly referred to as the ''20-day Rule.'' A corollary rule to the ''20-day Rule'' is NASD Rule 4730(b)(6), a Small Order Execution System (''SOES'') rule that provides that a market maker in a Nasdaq National Market (''NNM'') security will be deemed to have voluntarily withdrawn from a stock, and therefore be subject to the 20-Day Rule, if it has failed to restore a two-sided quotation within five minutes after its bid or offer has been completely decremented due to a SOES execution. When a market maker is deregistered from a stock because it failed to restore its quotation, it is referred to as being ''SOESed out of the Box.'' To avoid being ''SOESed out of the Box,'' members can do one of two things: (a) Elect to not have their quote size decremented upon the execution of SOES orders, provided the market maker's quote size is equal to or greater than the applicable SOES tier size; or (b)

utilize Nasdaq's autorefresh feature that automatically updates a market maker's quote after its quote size has been decremented.

Notwithstanding the 20-day Rule, NASD Rule 4619 affords market makers the ability to obtain an ''excused'' market maker withdrawal in certain limited circumstances. Market makers receiving ''excused'' withdrawals are not subject to the 20-Day Rule and can re-enter their quotes once the circumstances justifying the withdrawal no longer exist. For example the rule currently allows excused withdrawals for: (1) The duration of ''cooling off'' periods mandated by certain rules under Regulation M of the Exchange Act (formerly Exchange Act Rule 10b–6); (2) physical circumstances beyond the market maker's control; (3) religious holidays (provided the request is submitted 5 business days in advance of the holiday); (4) vacations (provided the request is received 20 business days in advance of the vacation and is made by a market maker with 3 or less Nasdaq terminals); (5) involuntary failures to maintain clearing arrangements; and (6) other legal requirements, (*e.g.*, the market maker is in possession of material non-public information).

The handling of excused withdrawal requests and the reinstatement of market makers who have been ''SOESed out of the Box'' was criticized in the SEC's 21(a) Report on the NASD and The Nasdaq Stock Market.[3] In sum, the SEC found that the NASD had improperly granted waivers of the 20-Day Rule for market makers that were ''SOESed out of the Box'' and that the NASD had not followed its own rules when granting excused withdrawals (*e.g.*, excused withdrawals for vacations were granted with less than 20-days advance notice). As a result, the SEC stated in its 21(a) Report that:

[t]he NASD's failure to enforce its excused withdrawal rules has fostered an environment that allowed market makers to avoid their responsibilities to maintain continuous quotes in the securities in which they made markets. Market makers were able to withdraw voluntarily from SOES beyond the permitted five-minute window, or otherwise withdraw from the market during periods of volatility without substantial risk that the NASD will enforce a twenty-day suspension.[4]

Accordingly, in order to ensure that market makers are not able to avoid or circumvent their market making obligations through inappropriate excused market maker withdrawals or inappropriate market maker reinstatements, the NASD and Nasdaq are submitting this rule proposal. As detailed below, the proposed changes are in three general areas: (1) Market maker reinstatements upon being ''SOESed out of the Box'' or after accidental market maker withdrawals; (2) bases for excused withdrawals; and (3) the jurisdiction of the Market Operations Review Committee (''MORC'') over excused market maker withdrawals and market maker reinstatements. In sum, by establishing more objective standards for the reinstatement of market makers who have been ''SOESed out of the Box'' or accidentally withdraw from a stock and modifying the rules to better reflect the operational realities of the marketplace, the NASD and Nasdaq believe the proposed modifications are responsive to the deficiencies noted in the SEC's 21(a) Report. Following are the specific rule changes proposed by the NASD and Nasdaq.

1. *Reinstatement of Market Makers Upon Being ''SOESed Out of the Box'' and for Accidental Withdrawals*

a. Reinstatements Upon Being ''SOESed Out of the Box''

The proposed rule change is designed to ensure that market maker reinstatements will only be made when it is clear that a market maker was not attempting to avoid its market making obligations. Specifically, the proposed changes to Rule 4730 provides that a market maker can be reinstated only if: (1) The market maker notifies Market Operations to request reinstatement within one hour of being ''SOESed out of the Box,'' and immediately thereafter provides written notification of the request; (2) a designated Nasdaq officer determines that the withdrawal was not an attempt by the market maker to avoid its obligations to make a continuous two-sided market, taking into account factors including market conditions at the time, the frequency with which the firm has been SOESed out of the Box, procedures adopted by the firm to avoid doing so inadvertently, and the length of time before the firm sought reinstatement; (3) it was a Primary Market Maker at the time it was SOESed out of the Box; and (4) the reinstatement would not result in the market maker's firm exceeding certain limitations on the number of reinstatements per year. In particular, under the proposal, firms that simultaneously made markets in less than 250 stocks during the previous calendar year could receive no more than four reinstatement per year; firms that simultaneously made markets in more than 250 but less than 500 stocks during the previous calendar year could receive one more than six reinstatements per year; and firms that simultaneously made markets in more than 500 stocks during the previous calendar year could receive no more than twelve reinstatements per year. Decisions to reinstate a market maker would be made by Nasdaq Market Operations staff and appeals of such decisions would be considered by the MORC.

Finally, notwithstanding the numerical limitations and requirements set forth above, in instances where a member firm experiences a documented technological constrain or failure involving either is own automated system or an automated system operated by Nasdaq, the market maker is a manager or co-manager of a secondary offering that is about to occur or has just occurred, or there has been a significant decline in the number of market makers in a particular issue, the NASFD and Nasdaq propose that Nasdaq should have the authority to reinstate a market maker that has been ''SOESed out of the Box'' if such reinstatement is necessary to protect investors or the integrity of the market. Specifically, before any such reinstatement could occur, Nasdaq staff would have to make a finding that the reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determine that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market.

b. Reinstatements for Accidental Withdrawals

There have been instances in the past where market makers have accidentally withdrawn from a stock because they inadvertently typed the wrong stock symbol. Because the rules currently do not provide that market makers can be reinstated in these instances, Nasdaq and the NASD propose that Rule 4620 be amended to permit such reinstatements provided the withdrawal was clearly accidental and did not reflect an attempt by the market maker to avoid its market making obligations. Specifically, under the proposal, a market maker that accidently withdraws as a market maker may be reinstated if: (1) The market maker notifies Market Operations of the accidental withdrawal within one hour of such withdrawal, and immediately thereafter provides written notification of the withdrawal and request; (2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to

[3] *See* Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (''21(a) Report''), SEC, August 8, 1996, at p. 91–95.

[4] *Id.* at p. 94.

avoid its market making obligations; and (3) the market maker's firm would not exceed specific reinstatement limitations per year. In particular, firms that simultaneously make markets in less than 250 stocks during the previous calendar year could receive no more than two reinstatements per year. Firms that simultaneously made markets in more than 250 but less than 500 stocks could receive no more than three reinstatements per year. Firms that simultaneously make markets in more than 500 stocks could receive no more than six reinstatements per year.

In addition, factors that would be considered in granting a reinstatement include: (1) The number of accidental withdrawals by the market maker in the past as compared to other market makers making markets in a comparable number of stocks; (2) the similarity between the symbol of the stock intended to be withdrawn and the symbol of the stock actually withdrawn; (3) market conditions; (4) whether the withdrawal served to reduce the market maker's exposure to market risk; and (5) the timeliness with which the market maker notified Nasdaq Market Operations of the error. Determinations initially would be made by Nasdaq Market Operations staff and be subject to review by the MORC.

2. Bases for Excused Withdrawals

Rule 4619(b) presently provides that excused withdrawal status may be granted for a variety of reasons provided that certain conditions are satisfied. Specifically, as noted above, excused withdrawal status may be granted for: (1) The duration of ''cooling off'' periods mandated by Regulation M; (2) physical circumstances beyond the market maker's control; (3) religious holidays (provided the request is submitted 5 business days in advance of the holiday); (4) vacations (provided the request is received 20 business days in advance of the vacation and is made by a market maker with 3 or less Nasdaq terminals); (5) involuntary failures to maintain clearing arrangements; and (6) other legal requirements (*e.g.*, the market maker is in possession of material non-public information). While the NASD and Nasdaq continue to believe that it is critical for the maintenance of the integrity of the market for Nasdaq to grant excused withdrawals only when warranted, particularly in light of the SEC's 21(a) Report, the NASD and Nasdaq nevertheless believe that the present excused withdrawal rule is not drafted broadly enough to encompass all of the legitimate reasons for an excused withdrawal. The NASD and Nasdaq also believe that the time parameters for advance notice of vacations and religious holidays are unnecessary.

Accordingly, the NASD and Nasdaq propose the following amendments to Rule 4619(b). First, excused withdrawals may be granted for ''circumstances'' beyond the market maker's control, not just ''physical circumstances'' beyond its control. With this amendment, unpredictable events, such as jury duty, bomb threats, the birth of a child, or a sudden illness, could be used as a basis for an excused withdrawal. Second, requests for excused withdrawals based on vacations and religious holidays may be submitted one business day in advance of the proposed withdrawal. Requests for excused withdrawals based on legal or regulatory requirements will continue to be made in writing, although Nasdaq recognizes that counsel to market makers often do not want to disclose the specific legal basis for their withdrawal request, particularly when the basis for the withdrawal is that the market maker is in possession of material, non-public information. In this connection, Nasdaq would continue its current practice of apprising NASD Regulation, Inc. of all such requests.

3. Jurisdiction of the MORC Over Excused Market Maker Withdrawals and Market Maker Reinstatements

Presently, appeals of Nasdaq staff determinations concerning excused withdrawal requests and market Maker reinstatements are within the purview of the NASD's Qualifications Committee's jurisdiction pursuant to NASD Rule 4730(b)(8). Pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, however, The Board of Directors of Nasdaq has delegated the MORC jurisdiction over such matters. Accordingly, the NASD proposes to amend Rules 4619, 4620, and 4730, to effectuate the transfer of jurisdiction over these matters from the Qualifications Committee to the MORC.

The NASD believes that the proposed rule changes are consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In particular, by ensuring that market makers will only be relieved of their market making obligations for legitimate reasons and that waivers of the ''20-day rule'' will only be made when it is absolutely clear that the market maker receiving the waiver was not attempting to avoid its market making obligations when it withdrew or was withdrawn from the security, the NASD and Nasdaq believe the proposed rule change will help to ensure that market makers are abiding by their obligations to make continuous, two-sided markets and promote quote competition among market makers. Such competition among market makers will, in turn, enhance the integrity of the Nasdaq market, the best execution of customer orders, and the price discovery process for Nasdaq securities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–97–04, and should be submitted by November 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27281 Filed 10–14–97; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39206; File No. SR–NYSE–97–27]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of the Pilot for Allocation Policy and Procedures

October 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 19, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change extends the effectiveness of the pilot program relating to the Exchange's Allocation Policy and Procedures until November 28, 1997. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to extend the effectiveness of a pilot program relating to the Exchange's Allocation Policy and Procedures. The Exchange's Allocation Policy and Procedures are intended: (1) To ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between specialist unit and security and (4) to contribute to the strength of the specialist system.

The Exchange recently implemented, on a pilot basis, a revised Allocation Policy and Procedures to amend the procedures by which the Exchange selects a specialist for newly listed companies.[3] The Exchange's pilot program, which expires October 7, 1997, provides listing companies with two options, either: (1) To have their specialist unit selected by the Allocation Committee according to existing allocation criteria, with company input permitted in the form of a ''generic letter'' which may describe desired general characteristics of a specialist unit, but may not mention particular units or describe characteristics that would be applicable to a readily identifiable specialist unit; or (2) to make the final selection of a specialist unit from among three to five units selected by the Allocation Committee, with a generic letter from the company describing desired specialist unit characteristics permitted, as in (1) above. In the case of both options, if a generic letter is submitted, the letter would be distributed to all specialist units along with allocation data sheets (''green sheets'').

The Exchanges proposes to extend the Allocation Policy and Procedure pilot program until November 28, 1997 to continue to study its effects.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that extending the effectiveness of the Allocation Policy and Procedures until November 28, 1997 is consistent with these objectives in that they enable the Exchange to further enhance the process by which stocks are allocated between specialist units to ensure fairness and equal opportunity in the process.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38372 (March 7, 1997), 62 FR 13421 (March 21, 1997) (notice of filing and immediate effectiveness of File No. SR–NYSE–97–04).

[4] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–27 and should be submitted by November 5, 1997.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission believes the Exchange's proposal to extend the effectiveness of the pilot program until November 28, 1997 is consistent with Section 6(b)(5) of the Act[6] because the extension will permit the NYSE to further study the impact of the revised Allocation Policy and Procedures. The Commission notes that the extension is limited in duration. The Commission believes that it is reasonable to extend the pilot program for a short period of time to allow the Exchange further time to determine whether the revised allocation procedures are fair to all market participations, including listing companies, specialist units and public investors. The Commission expects the NYSE to submit any supplemental information it has on the pilot program, along with any request to modify, extend, or permanently approve the pilot by October 17, 1997.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after publication of the proposed rule change in the **Federal Register**. The Commission notes that accelerated approval will enable the Exchange to continue the Allocation Policy and Procedures pilot program on an uninterrupted basis. The Commission further notes that it has previously solicited comments on the pilot program and no comments were received. Further, the extension of the existing pilot is of limited duration, only until November 28, 1997. For the foregoing reasons, the Commission believes that good cause exists pursuant to Section 19(b)(2) of the Act[7] to approve the proposed rule change on an accelerated basis.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–97–27) is hereby approved on an accelerated basis until November 28, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27283 Filed 10–14–97; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39221; File No. SR–Philadep–97–04]**

## Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Ceasing Activity as a Securities Depository

October 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 25, 1997, Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared primarily by Philadep. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Under the proposed rule change, Philadep will cease to engage in securities depository services. Philadep, Stock Clearing Corporation of Philadelphia (''SCCP''), and their parent organization, Philadelphia Stock Exchange, Inc. (''PHLX'') entered into an agreement dated as of June 18, 1997 with The Depository Trust Company (''DTC'') and the National Securities Clearing Corporation (''NSCC'') (''Agreement''). Under the Agreement, DTC and NSCC will assist PHLX in winding down the operation of its full clearing agency services by offering SCCP participants and Philadep participants an opportunity to become members of NSCC or DTC, as the case may be. In consideration for DTC's and NSCC's assistance, PHLX, SCCP, and Philadep have agreed not to engage in the securities clearing and depository business for five years, except as otherwise specified in the Agreement.

The parties to the Agreement tentatively have scheduled the closing date for the Agreement to be November 14, 1997.[2] SCCP and Philadep have informed their participants of the Agreement and are taking measures to ensure the orderly transition of participants to alternative clearing and depository arrangements.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

PHLX has decided to limit its clearance and settlement business and

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[5] 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).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] The closing date may be adjusted by the mutual consent of the parties to the Agreement.

[3] The Commission has modified the text of the summaries prepared by Philadep.

to close its securities depository business offered through its wholly owned subsidiaries, SCCP and Philadep, respectively, in order to focus its resources on the operations of the exchange itself.[4] The purpose of the proposed arrangement is to enable PHLX, SCCP, and Philadep to achieve this objective while affording participants of these clearing agencies the opportunity to become participants of NSCC or DTC, as the case may be, or to utilize the services of other clearing or depository service providers.

PHLX, SCCP, and Philadep will cooperate with NSCC and DTC to assure an orderly transition with respect to the wind down of Philadep's business. In this regard, PHLX and Philadep will assist DTC and sole Philadep participants in having the participants become DTC participants to the extent that they meet DTC qualifications and desire to become DTC participants. The parties will cooperate to carry out the orderly transfer of securities from the custody of Philadep to the custody of DTC for sole Philadep participants that qualify and authorize such transfers.

Philadep believes that the proposed rule change is consistent with Section 6(b)(5)[5] of the Act because it will enable PHLX to concentrate its efforts on its core business, the exchange itself. This strategic initiative will, in turn, remove impediments and perfect the mechanism of a free and open market and a national market system.

Philadelp also believes that the proposal is consistent with Section 17A of the Act[6] and the rules and regulations thereunder because it (i) will remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) will reduce the fragmented nature of the securities custody business to more closely integrate the industry which may thereby help in the safeguarding of funds which are in the custody and control of a clearing agency or for which it is responsible. Specifically, the proposed arrangements will help reduce the risk associated with having interfaces, will provide for more efficient and less expensive clearing and depository services, and thereby will facilitate the prompt and accurate clearance and settlement of such transactions.

[4] SCCP has submitted a rule filing [File No. SR–SCCP–97–04] describing the revisions and limitations of its clearing services.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78q–1.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

Philadelp believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Securities depositories registered under Section 17A of the Act are not conventional businesses but utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities depository requires a substantial and continuing investment in infrastructure, including securities vaults, telecommunications links with users, data centers, and disaster recovery facilities, in order to meet the increasing needs of participants and to respond to regulatory requirements. As such, several exchanges, including the Boston Stock Exchange, the Pacific Exchange, and the Chicago Stock Exchange have terminated the operation of their securities depositories.

After consummation of the proposed arrangements, securities industry members will continue to have access to high quality, low cost depository services provided under the mandate of the Act. The overall cost to the industry of having such services available should be reduced thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a depository's interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, Philadep's withdrawal from maintaining depository facilities should reduce costs to participants and thereby should remove impediments to competition. Finally, PHLX's ability to focus its resources on the operations of the Exchange should help enhance competition among securities markets.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Philadep consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of Philadep. All submissions should refer to File No. SR–Philadep–97–94 and should be submitted by November 5, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27279 Filed 10–14–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39223; File No. SR–SCCP–97–07]**

## Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change Relating to Revision and Limitation of Clearing Services

October 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 25, 1997, Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

Commission (''Commission'') and on September 30, 1997, amended the proposed rule change as described in Items I, II and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. (''PHLX''), SCCP, Philadelphia Depository Trust Company (''Philadep''), the National Securities Clearing Corporation (''NSCC'') and The Depository Trust Company (''DTC'') have entered into an agreement dated as of June 18, 1997 (''Agreement'') under which SCCP has agreed (i) to cease providing full securities clearing services, (ii) to make available to SCCP participants access to the facilities of one or more other organizations providing securities clearing services, and (iii) to transfer to the books of such other organizations the continuous net settlement (''CNS'') system open positions of SCCP participants that are shown on SCCP's books. In addition, under the terms of the Agreement Philadep has agreed (i) to cease providing securities depository services, (ii) to make available to its participants access to the facilities of one or more other organizations providing securities depository services, and (iii) to transfer to the custody of such other organizations the securities that are held in the custody of Philadep for the accounts of such participants. Pursuant to the Agreement, SCCP and Philadep have agreed not to compete for a period of five years with DTC and NSCC in providing securities depository services or securities clearing services.

The Agreement contemplates that SCCP will continue to provide an interface between certain of its floor members and specialists and a registered clearing agency.[2] The Agreement further contemplates that SCCP will continue to provide margin services to (i) PHLX equity specialists for their specialists and alternate specialists transactions and for their proprietary transactions and for their proprietary transactions in securities for which they are not appointed as specialists or alternate specialists and (ii) two PHLX members listed on a schedule that are not PHLX equity specialists for their proprietary transactions. The clearing services contemplated to be conducted by SCCP after the closing date of the Agreement[3] will be carried out through an omnibus account that SCCP will maintain at NSCC for such purpose and will not include the maintenance or offering of CNS accounts for its participants.

The proposed rule change incorporates the Agreement as it relates to SCCP into SCCP's rules and procedures. In addition, the proposed rule change will amend SCCP's rules in a manner consistent with undertakings agreed to by SCCP in settling a recent administrative proceeding with the Commission.[4]

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[5]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

PHLX has decided to limit the clearance and settlement business provided by SCCP and to close its securities depository business offered through Philadep.[6] The Agreement provides for an orderly process to enable PHLX, SCCP, and Philadep to achieve this objective, while affording participants of SCCP or Philadep the opportunity to become participants of NSCC or DTC, respectively, or to utilize the services of other providers of clearing services or depository services.

After the closing date, SCCP no longer will maintain its CNS system for conducting settlements between SCCP and its participants. As a result, SCCP is proposing to cease providing the cash settlement services attendant to Philadep's same-day funds settlement services attendant to Philadep's same-day funds settlement (''SDFS'') system and the Philadep settlement process. However, pursuant to the Agreement SCCP may continue to offer limited clearing and settlement services to PHLX members. SCCP intends to provide trade confirmation and recording services for PHLX members that carry out transactions through regional interface operations (''RIO'') accounts and ex-clearing accounts. Under the amended versions of SCCP Rules 10 and 11, SCCP will not provide clearing guarantees to such transactions.

SCCP will continue to offer margin accounts for certain participants in a special account established by SCCP at NSCC.

Pursuant to the Agreement, SCCP will establish an omnibus clearance and settlement account at NSCC and abide by NSCC rules and procedures as a participant of NSCC. Under the Agreement, SCCP may offer margin accounts only to: (i) PHLX equity specialists for their specialists and alternate specialists transactions, as well as for their proprietary transactions in securities for which they are not appointed as specialists or alternate specialists and (ii) two PHLX members listed on a schedule who are not PHLX equity specialists for their proprietary transactions. Under the Agreement, SCCP may add other PHLX members to the schedule referred to in item (ii) above subject to NSCC's approval.

A new definition of ''margin member'' will be established in SCCP Rule 1 to reflect those PHLX floor firms entitled to clear through a SCCP margin account.[7] Pursuant to the amended version of SCCP Rule 9, SCCP may provide margin accounts for margin members that clear and settle their transactions through SCCP's omnibus clearance and settlement account. SCCP will margin such accounts based on its Procedures and on Regulation T of the Board of Governors of the Federal Reserve System.[8]

SCCP may demand at any time that a margin member provide additional margin based upon SCCP's review of such margin member's security positions held by SCCP. SCCP will retain the margin thresholds currently specified in its procedures and may require adequate assurances or

[2] The term *clearing agency* is defined in section 3(a)(23) of the Act. 15 U.S.C. 78c(a)(23).

[3] The effective date of the proposed rule change described is proposed to be the ''closing date'' as defined in the Agreement. The parties to the Agreement tentatively have scheduled the closing date for November 14, 1997, but this date may be adjusted by mutual consent of the parties.

[4] The text of the proposed rule change was submitted with SCCP's rule filing and is available for inspection and copying at the Commission's Public Reference Room and through the principal office of SCCP.

[5] The Commission has modified the text of the summaries prepared by SCCP.

[6] Philadep has submitted a rule filing [File No. SR–Philadep–97–04] describing the way in which Philadep will exit the depository business.

[7] Under the proposed rule change, the term ''margin member'' will be defined to include participants that are PHLX specialists, alternate specialists, and other PHLX floor members specifically approved by NSCC to effect trading in a margin account.

[8] 12 CFR 220.

additional margin in addition to the minimum margin thresholds in order to protect SCCP in issues deemed by SCCP to warrant additional protection. SCCP may demand any such margin payments in federal funds in accordance with its procedures.

SCCP may issue margin calls to any margin member whose margin requirement exceeds the account equity of the margin member's margin account.[9] SCCP may waive any amount that would trigger a margin call not exceeding $500. A margin member that fails to meet a margin call will be subject to SCCP Rule 22 (formerly SCCP Rule 23) which governs disciplinary proceedings and penalties. SCCP may cease to act for delinquent margin members and will retain a lien on all delinquent margin members' accounts and securities therein.

SCCP will segregate and maintain records on each individual margin account and will maintain the omnibus clearance and settlement account so as to reflect all positions in SCCP's margin accounts. SCCP also will guarantee the settlement obligations of the omnibus clearance and settlement account to NSCC. In turn, pursuant to the Agreement, PHLX will guarantee SCCP's obligations to NSCC.

SCCP's books and records for the omnibus clearance and settlement account will reflect all activity that occurs in the account at NSCC and DTC. At any time prior to midnight (Philadelphia time) on the next business day after SCCP receives a margin member's trade, SCCP will be entitled to reverse such a trade from such member's account. SCCP will settle the omnibus clearance and settlement account with NSCC each business day in accordance with NSCC's rules and procedures. Accordingly, SCCP will be subject to NSCC's rules including but not limited to the following: (i) Daily mark-to-market requirements, (ii) allocations of long and short securities positions, (iii) dividend and reorganization settlement activities, and (iv) pledging of collateral and stock loans. Dividends, reorganizations, adjustments, and buy-ins, will be passed through to margin members in accordance with SCCP's procedures. SCCP will continue to provide margin members with purchase and sales reports, bookkeeping reports, dividend and reorganization reports, and preliminary equity reports in accordance with SCCP's procedures.

[9] Under the proposed rule change, SCCP Rule 1 will define the term ''account equity'' as the total net current market value of security positions held in the margin account plus or minus cash balances in such account.

Through the omnibus clearance and settlement account, SCCP will have one composite settlement per day with NSCC. SCCP will maintain line of credit (''LOC'') arrangements with one or more commercial banks sufficient to support anticipated funding needs of the underlying margin accounts. SCCP currently is negotiating with lending institutions to replace its existing LOCs. During the past four months, SCCP has not exceeded an aggregate $6 million debit with respect to the margin members targeted to remain in SCCP following the closing date. In order to cover all such margin debits, SCCP anticipates obtaining an aggregate of $5 million in committed and $5 million in uncommitted LOCs from each of two separate lending institutions, totaling $20 million.

SCCP proposes to amend SCCP Rule 14 (formerly SCCP Rule 15) to provide that mark-to-market funds may not be used to finance margin members' account activity. SCCP also is amending Rule 14 to provide that any mark-to-market funds collected by SCCP will be segregated and invested in accordance with analogous procedures set forth in SCCP Rule 4. Under the amended version of SCCP Rule 13, SCCP will pass through any buy-ins submitted by NSCC to SCCP or by a SCCP participant to NSCC in accordance with NSCC's buy-in rules and procedures.

To ensure that margin members have an efficient way to obtain securities depository services after the closure of Philadep's depository service, NSCC will sponsor SCCP in opening a depository account at DTC to benefit margin members. In the event that margin members carry out trades in securities not eligible for custodial services in DTC's book-entry system, SCCP will utilize NSCC's direct clearing service to settle the transactions. SCCP will continue to perform bookkeeping and reconciliation services for the omnibus clearance and settlement account and its related DTC custody account pursuant to SCCP procedures.

In accordance with NSCC's participants fund formulae, SCCP, as a NSCC participant and a sponsored participant of DTC, will be required to provide NSCC and DTC with participants fund contributions for the omnibus clearance and settlement account. With respect to SCCP's own participants fund formulae, SCCP will delete its participants fund formulae applicable to inactive accounts, full service CNS accounts, and layoff accounts. SCCP proposes to establish a fixed $35,000 contribution for each of the following account categories: specialist margin and non-specialist margin. No changes will be made to the RIO account formula. Accordingly, RIO account participants will continue to be subject to a contribution of $10,000 to $75,000 depending upon monthly trading activity. SCCP will continue to use its current procedure under which participant engaging in more than one account type activity will be subject to only the formula that would generate the highest participants fund contribution.

SCCP may allocate any portion of its participants fund to satisfy NSCC's DTC's participants fund requirements with respect to the omnibus clearance and settlement account. Any excess SCCP participants fund cash not used to fund SCCP's NSCC and DTC participants fund requirements will be segregated and invested by SCCP in accordance with SCCP Rule 4. At the present time, SCCP estimates that its revised participants fund formulae will generate participants fund contributions in excess of the amount required to fund SCCP's participants fund contributions with NSCC and DTC. If SCCP's participants fund formulae do not provide for contributions that equal those which would be required pursuant to the NSCC and DTC participants fund formulae, SCCP reserves the right to collect from each participant an additional pro rata charge to meet any such deficit.

SCCP proposes to amend SCCP Rule 4 to specify that no participants fund contributions may be used in financing margin members' margin account activity.[10] In addition SCCP proposes to amend Rule 4 to provide for the establishment of SCCP and Philadep of a reserve fund that will be used to provide a liquid fund to draw on as necessary to meet certain specified expenses. The reserve fund will be funded with deposits of $1,000,000 by August 11, 1998; $1,000,000 by August 11, 1999; and $1,000,000 by August 11, 2000. The reserve fund will be held and invested in accordance with the same procedures set forth in SCCP Rule 4 for the holding and investment of the participants fund. Amounts drawn from the reserve fund must be replenished within sixth days following the date of each such withdrawal. SCCP Rule 4 also will be amended to provide that no portion of the reserve fund may be used in financing margin members' margin account activity.

SCCP is amending its schedule of fees to delete those fees associated with

[10] As previously stated, SCCP is establishing separate sources of funding, including bank LOCs, to serve the operation of its margin members' margin accounts.

services no longer to be offered. SCCP also will charge RIO Accounts the applicable value fees of $0.05 per $1,000 of contract value.

SCCP believes the proposed rule change is consistent with the requirements of Section 17A of the Act[11] and the rules and regulations thereunder because the restructuring of SCCP's business as contemplated by the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions by integrating and consolidating clearing services available to the industry and will assure the safeguarding of securities and funds in the custody or control of SCCP or for which SCCP is responsible.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

SCCP does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Securities clearing agencies registered under Section 17A of the Act are not conventional businesses but utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities clearing agency requires a substantial and continuing investment in infrastructure including telecommunications links with users, data centers, and disaster recovery facilities in order to meet the increasing needs of participants and respond to regulatory requirements. To date, other exchanges, including the Boston Stock Exchange, the Pacific Exchange, and the Chicago Stock Exchange have substantially terminated the operation of their securities clearing corporations.

After consummation of the proposed arrangements, securities industry members shall continue to have access to high quality, low cost clearing services provided under the mandate of the Act. The overall cost to the industry of having such services available may be reduced thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a clearing corporation's interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, SCCP's withdrawal from maintaining clearing facilities should reduce costs to participants and thereby should remove impediments to competition. Finally, PHLX's ability to focus its resources on the operations of the Exchange should help enhance competition among securities markets.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SCCP consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof, with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–97–04 and should be submitted by November 5, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27278 Filed 10–14–97; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 200.30–3(a)(12).

## U.S. SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #2983]**

### State of Florida

Hillsborough County and the contiguous Counties of Hardee, Manatee, Pasco, Pinellas, and Polk in the State of Florida constitute a disaster area as a result of damages caused by severe thunderstorms, excessive rains, and flooding which occurred September 26 through 28, 1997. Applications for loans for physical damage may be filed until the close of business on December 4, 1997 and for economic injury until the close of business on July 6, 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:

| | 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 298306 and for economic injury the number is 961500. (Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 5, 1997.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 97–27166 Filed 10–14–97; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Economic Injury Disaster #9612]**

### State of Idaho; (And Contiguous Counties in Montana and Washington)

Bonner County and the contiguous Counties of Boundary, Kootenai, and Shoshone in the State of Idaho; Lincoln and Sanders Counties in the State of Montana; and Pend Oreille and Spokane Counties in the State of Washington constitute an economic injury disaster

loan area as a result of flooding that occurred during the last week of May 1997 on the Pend Oreille Lake and River system. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on July 1, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, 1825 Bell Street, Suite 208, Sacramento, CA 95825.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury numbers are 961200 for Idaho; 961300 for Montana; and 961400 for Washington.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 1, 1997.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 97–27168 Filed 10–14–97; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Amendment to Declaration of Disaster #2976]**

### State of North Carolina; (And Contiguous Counties in South Carolina)

The above-numbered declaration is hereby amended to extend the filing deadline for physical damage to November 5, 1997.

All other information remains the same, i.e., the deadline for filing applications for economic injury is May 5, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 5, 1997.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 97–27165 Filed 10–14–97; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of Virginia, dated September 4, 1997, the United States Small Business Administration hereby revokes the license of Washington Finance and Investment Corporation a District of Columbia Corporation, to function as a Small Business Investment Company under the Small Business Investment Company License No. 03/03–5150 issued to Washington Finance and Investment Corporation on June 3, 1982, and said license is hereby declared null and void as of October 6, 1997.

Small Business Administration.

Dated: October 6, 1997.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 97–27169 Filed 10–14–97; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice No. 2619]**

### Shipping Coordinating Committee; Assembly, Council, and Conference on Bulk Carrier Safety; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:45 AM on Tuesday, October 28th, in Room 6103, at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 19th session of the Extraordinary Council, 79th session of Council and 20th session of the Assembly of the International Maritime Organization (IMO) which is scheduled for 14–28 November 1997, at the IMO Headquarters in London. The meeting will also finalize preparations for the Conference on Bulk Carrier Safety which is scheduled in conjunction with the second week of the Assembly from 24–28 November 1997. Discussions will focus on papers received and draft U.S. positions.

Among other things, the items of particular interest are:

- Reports of Committees;
- Reports on Diplomatic Conferences;
- Work Program and Budget for 1998–1999;
- Election of Members of the Council.

The Conference on Bulk Carrier Safety discussions will begin after the completion of the discussion for the Assembly and will include the following:

- Consideration and adoption of amendments to SOLAS to improve bulk carrier safety
- Consideration and adoption of amendments to Resolution A.744(18)—Guidelines on the enhanced surveys of bulk carriers and oil tankers; and
- Consideration and adoption of resolutions and recommendations related to bulk carrier safety.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Director, International Affairs, U.S. Coast Guard Headquarters, Commandant (G–CI), Room 2114, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling: (202) 267–6919. Interested persons of the conference of Bulk Carrier Safety may seek information by writing: Office of Human Element & Ship Design Division, U.S. Coast Guard Headquarters, Commandant (G–MSE–1), Room 1304, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling: LCDR Dan Pippenger at (202) 267–0171.

Dated: October 8, 1997.

**Russel A. LaMantia,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 97–27241 Filed 10–14–97; 8:45 am]

BILLING CODE 4710–07–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Partnership Council Meeting

**AGENCY:** Office of the Secretary, (DOT).

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

**TIME AND PLACE:** The Council will meet on Thursday, October 30, 1997, at 10:00 a.m., at the Department of Transportation, Nassif Building, the Fletcher Room, room 10214, 400 Seventh Street, SW., Washington, DC 20590. The conference room is located on the 10th floor.

**TYPE OF MEETING:** These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

**POINT OF CONTACT:** John E. Budnik or Jean B. Lenderking, Corporate Human Resources Leadership Division, M–13, Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 9425, Washington, DC 20590, (202) 366–9439 or (202) 366–8085, respectively.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to provide an update of current issues within the Department of Transportation including smoking policy, career transition plan update, and labor-management climate survey status.

**PUBLIC PARTICIPATION:** We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by October 27, 1997 in order to be considered at the October 30 meeting. Only comments submitted in advance will be considered.

Issued in Washington, DC, on October 8, 1997.

For the Department of Transportation.

**John E. Budnik,**

*Associate Director, Corporate Human Resources Leadership Division.*

[FR Doc. 97–27242 Filed 10–14–97; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

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

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

**DATES:** The meeting will be held on October 30, 1997, beginning at 10:00 a.m.

**ADDRESSES:** The meeting will be held at the Federal Aviation Administration Building, 800 Independence Avenue, SW, Washington, DC., in the McCracken Room (Round Room) on the 10th floor.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Williams, Office of Rulemaking (ARM–109), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9685, facsimile (202) 267–5075, or by electronic mail at Linda.L.Williams@faa.dot.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on October 30, 1997, at the Federal Aviation Administration Building, Round Room (10th floor), 800 Independence Avenue, NW., Washington, DC.

The agenda for this meeting will include:

(1) A presentation by the All Weather Operations Working Group of an advisory circular, ''Criteria for Approval of Category III Weather Minima for Takeoff, Landing, and Rollout'';

(2) A discussion on establishing a harmonization task and an airplane performance harmonization working group; and

(3) An update on the activity of the Fatigue Countermeasures and Alertness Management Techniques Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on October 8, 1997.

**David L. Catey,**

*Acting Manager, Air Transportation Division, Flight Standards Service.*

[FR Doc. 97–27401 Filed 10–14–97; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33302]**

### R.J. Corman Railroad Co./Allentown Lines, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corp.

R.J. Corman Railroad Company/Allentown Lines, Inc. (RJCN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate a total of approximately 2.76 miles of rail line owned by Consolidated Rail Corporation (Conrail), known as Cornwall Industrial Track, between milepost 0.9 and milepost 3.66 in Lebanon County, PA. RJCN will also acquire a 0.6-mile segment of Conrail's Lebanon Industrial Track between approximately milepost 18 and approximately milepost 18.6, which is parallel and adjacent to a portion of the Cornwall Industrial Track.[1] The transaction was expected to be consummated on or soon after September 30, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33302, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit,1925 K Street, NW., Washington, DC 20423–0001 and served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW, Suite 400, Washington, DC 20036.

Decided: October 7, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–27291 Filed 10–14–97; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Performance Review Board Members

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA) Performance Review Boards which was published in the **Federal Register** on October 1, 1996 (61 FR 51317).

**EFFECTIVE DATE:** October 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Angel I. Wolfrey, Office of Human Resources Management (052B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–4940.

**VA Performance Review Board (PRB)**

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*Shirley Carozza,* Deputy Assistant Secretary for Budget
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*Kathy E. Jurado,* Assistant Secretary for Public and Intergovernmental Affairs
*Robert E. Coy,* Deputy General Counsel

*William T. Merriman,* Deputy Inspector General
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*Barry L. Bell,* Newtwork Director, VISN 20
*Linda W. Belton,* Newtwork Director, VISN 11
*John T. Carson,* Network Director, VISN 14
*Vernon Chong, M.D.,* Network Director, VISN 17
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*Larry R. Deal,* Network Director, VISN 7
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*Larry E. Deters,* Network Director, VISN 9
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*Denis J. Fitzgerald, M.D.,* Network Director, VISN 1
*Harold F. Gracey,* VA Chief of Staff
*W. Todd Grams,* Chief Financial Officer
*Leroy P. Gross, M.D.,* Network Director, VISN 6
*John R. Higgins, M.D.,* Network Director, VISN 16
*Thomas J. Hogan,* Director, Management and Administrative Support Office (Ex Officio)
*Thomas V. Holohan, M.D.,* Chief Patient Care Services Officer
*Thomas B. Horvath, M.D.,* Director, Mental Health and Behavioral Sciences
*Smith Jenkins, Jr.,* Network Director, VISN 22
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*William E. Whyte,* Assistant Inspector General for Audit, General Services Administration

Dated: October 1, 1997.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

[FR Doc. 97–27170 Filed 10–14–97; 8:45 am]
**BILLING CODE 8320–01–M**

# Corrections

**Federal Register**

Vol. 62, No. 199

Wednesday, October 15, 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 ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97-6-000]**

### Trunkline Gas Company; Notice of Request for Extension of Waiver

*Correction*

In notice document 97–26593 appearing on page 52535, in the issue of Wednesday, October 8, 1997, make the following correction:

On page 52535, in the second column, the Docket No. should read as set forth above.

**BILLING CODE 1505-01-D**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 170

**[OPP-250121; FRL-5599-2]**

**RIN 2070-AC95**

### Pesticide Worker Protection Standard; Administrative Exception for Cut-Rose Hand Harvesting

*Correction*

Document 97–26321 was inadvertently published in the Proposed Rules section of the issue of Friday, October 3, 1997, beginning on page 51994. It should have appeared in the Rules and Regulations section.

**BILLING CODE 1505-01-D**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Parts 1300, 1309, 1310

**[DEA Number 163P]**

**RIN 1117-AA44**

### Implementation of the Comprehensive Methamphetamine Control Act of 1996; Regulation of Pseudoephedrine, Phenylpropanolamine, and Combination Ephedrine Drug Products and Reports of Certain Transactions to Nonregulated Persons

*Correction*

In proposed rule document 97–26150 beginning on page 52294, in the issue of Tuesday, October 7, 1997, make the following correction:

On page 52298, in the second column, in the fourth line from the bottom, ''401,'' should read ''402,''.

**BILLING CODE 1505–01–D**

Federal Register

Wednesday
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## Part II

# Department of Justice

**Bureau of Prisons**

**28 CFR Parts 524 and 550**

**Drug Abuse Treatment and Intensive Confinement Center Programs; Early Release Consideration; Final Rule**

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Parts 524 and 550**

**[BOP–1070–I]**

**RIN 1120–AA66**

## Drug Abuse Treatment and Intensive Confinement Center Programs: Early Release Consideration

**AGENCY:** Bureau of Prisons, Justice.

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

**SUMMARY:** In this document, the Bureau of Prisons is revising its rule on Drug Abuse Treatment Programs which allows for consideration of early release of eligible inmates who complete a residential drug abuse treatment program. The Bureau of Prisons is revising the rules with respect to the criteria for receiving a sentence reduction and also with respect to the authority of the Community Corrections Regional Administrator to adjust the presumptive release date for an inmate in a community-based program. The amendment is intended to provide for adequate drug treatment transitional programs and to demonstrate more clearly the discretion granted to the Director of the Bureau of Prisons under 18 U.S.C. 3621(e) by listing the criteria that would preclude an inmate from receiving a sentence reduction as determined by the Director of the Bureau of Prisons. Criteria for possible sentence reduction under the intensive confinement center program are being modified in a similar manner as a conforming amendment.

**DATES:** Effective October 9, 1997. Comments are due December 15, 1997.

**ADDRESSES:** Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, D.C. 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is further amending its regulations on Drug Abuse Treatment Programs (28 CFR part 550, subpart F). An interim rule on this subject, which implemented Section 32001 of the Violent Crime Control and Law Enforcement Act of 1994 (codified at 18 U.S.C. 3621(e)), was published in the **Federal Register** on May 25, 1995 (60 FR 27692) and was amended on May 17, 1996 (61 FR 25122). Comments received on these previous interim rules will be addressed in a separate document when the rules are finalized.

The interim rule published on May 25, 1995, attempted to define the term ''crime of violence'' pursuant to 18 U.S.C. 924(c)(3). Because of differences in application of case law among the various Federal courts, a few crimes would not be clearly covered by the Bureau's definition. This interim rule avoids this complication by using the discretion allotted to the Director of the Bureau of Prisons in granting a sentence reduction to exclude inmates whose current offense is a felony (a) that has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or (b) that involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or (c) that by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or (d) that by its nature or conduct involves sexual abuse offenses committed upon children.

As a conforming amendment, the criteria for possible sentence reduction under the intensive confinement center program (28 CFR 524, subpart D) pertaining to crimes of violence (§ 524.31(a)(3)) are being modified in a similar manner.

Under § 550.58(c)(3), the Community Corrections Regional Administrator had the authority to retard or disallow any portion of the maximum 12 month reduction for an inmate in a community-based program based upon a disciplinary finding or based on program needs (for example, the inmate has not established an adequate release plan). This paragraph is being revised to specify that if an inmate cannot fulfill his or her community-based treatment obligations by the presumptive release date, the Community Corrections Regional Administrator may adjust the presumptive release date by the minimum amount of time necessary to fulfill treatment obligations. The Community Corrections Regional Administrator, as the Bureau official responsible for monitoring the quality of the treatment programs available in community-based programs, makes determinations as to the inmate's completion of applicable transitional services. Such determinations are responsive to the treatment needs of the inmate and are not intended to be punitive. Disciplinary findings which can result in an inmate's being precluded from receiving a sentence reduction (see redesignated § 550.58(a)(2)(iv) and (3)(ii)) remain as a determination of the Discipline Hearing Officer.

The Bureau is publishing this change as an interim rule in order to solicit public comment while continuing to provide consideration for early release to qualified inmates. Interested persons may participate in this interim rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Federal Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, D.C. 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. § 601, et seq.), does not have a significant impact on a substantial number of small entities within the meaning of the Act. Because this rule pertains to correctional management of persons committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

### List of Subjects

*28 CFR Part 524*

Prisoners.

*28 CFR Part 550*

Prisoners.

**Kathleen M. Hawk,**

*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 524 in subchapter B of 28 CFR, chapter V, and part 550 in subchapter C of 28 CFR, chapter V are amended as set forth below.

**SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER**

## PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046,

4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; Title V, Pub. L. 91–452, 84 Stat. 933 (18 U.S.C. Chapter 223); 28 CFR 0.95–0.99.

2. In § 524.31, paragraph (a)(3) is revised to read as follows:

**§ 524.31 Eligibility and placement.**

(a) * * *

(3) Is not serving a term of imprisonment for a crime of violence or a felony offense:

(i) That has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or

(ii) That involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or

(iii) That by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or

(iv) That by its nature or conduct involves sexual abuse offenses committed upon children.

* * * * *

## SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

## PART 550—DRUG PROGRAMS

3. The authority citation for 28 CFR part 550 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4251–4255, 5006–5024 (repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

4. In § 550.58, the introductory text, paragraph (a) heading, and paragraph (c)(3) are revised, paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(2) and (a)(3), and a new paragraph (a)(1) is added to read as follows:

**§ 550.58 Consideration for early release.**

An inmate who was sentenced to a term of imprisonment pursuant to the provisions of 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense, and who is determined to have a substance abuse problem, and successfully completes a residential drug abuse treatment program during his or her current commitment may be eligible, in accordance with paragraph (a) of this section, for early release by a period not to exceed 12 months.

(a) *Additional early release criteria.* (1) As an exercise of the discretion vested in the Director of the Federal Bureau of Prisons, the following categories of inmates are not eligible for early release:

(i) INS detainees;

(ii) Pretrial inmates;

(iii) Contractual boarders (for example, D.C., State, or military inmates);

(iv) Inmates who have a prior felony or misdemeanor conviction for homicide, forcible rape, robbery, or aggravated assault, or child sexual abuse offenses;

(v) Inmates who are not eligible for participation in a community-based program as determined by the Warden on the basis of his or her professional discretion;

(vi) Inmates whose current offense is a felony:

(A) That has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or

(B) That involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or

(C) That by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or

(D) That by its nature or conduct involves sexual abuse offenses committed upon children.

* * * * *

(c) * * *

(3) If the inmate cannot fulfill his or her community-based treatment obligations by the presumptive release date, the Community Corrections Regional Administrator may adjust the presumptive release date by the minimum amount of time necessary to allow for fulfillment of the treatment obligations.

[FR Doc. 97–27252 Filed 10–9–97; 2:48 pm]

BILLING CODE 4410–05–P

Federal Register

Wednesday
October 15, 1997

## Part III

# The President

Federal Register
Vol. 62, No. 199
Wednesday, October 15, 1997

# Presidential Documents

**Title 3—**

## The President

**Proclamation 7038 of October 10, 1997**

## National School Lunch Week, 1997

**By the President of the United States of America**

**A Proclamation**

Each year during the month of October, we set aside a week to focus on the importance of the National School Lunch Program and its contributions to the health and well-being of America's schoolchildren. Through this program, established more than 50 years ago by President Truman, young people learn firsthand about healthful dietary habits and how to make wise choices regarding the foods they eat. And for millions of children, many of whom come from families in need, their school lunch is the most nutritious meal they will eat during the day.

When President Kennedy proclaimed the first National School Lunch Week in 1963, some 68,000 schools were serving lunches to 16 million children each day. Today, the program is available in more than 94,000 schools across the country, and 26 million students participate daily. This dramatic growth proves that the program continues to meet a significant need in local communities across the Nation, and its success admirably reflects the hard work and commitment of school food-service professionals, as well as the support and technical assistance provided by State administrators.

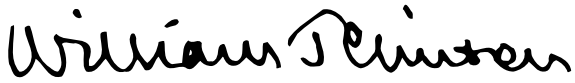
The National School Lunch Program also reflects our profound concern for the well-being of our young people. By providing them with wholesome, nutritious meals day in and day out, we are helping to improve our children's overall health, increase their learning capacity, lengthen their attention span, and promote healthful dietary habits that will serve them well for a lifetime.

All of these accomplishments are made possible by the many dedicated food-service professionals, administrators, educators, parents, business and community leaders, and other concerned individuals at the local, State, and Federal levels who work in partnership to ensure the effectiveness of the National School Lunch Program. We must strive to build on their achievements so that this vital program will continue to meet the needs of America's children into the next century.

In recognition of the contributions of the National School Lunch Program to the nutritional well-being of children, the Congress by joint resolution of October 9, 1962 (Public Law No. 87-780), has designated the week beginning the second Sunday in October of each year as ''National School Lunch Week'' and has requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 12 through October 18, 1997, as National School Lunch Week. I call upon all Americans to recognize those individuals whose efforts contribute to the success of this program and to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 97–27540
Filed 10–14–97; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7039 of October 10, 1997**

## Columbus Day, 1997

**By the President of the United States of America**

**A Proclamation**

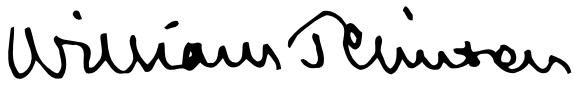
The life and achievements of Christopher Columbus demonstrate how powerful and lasting an influence one individual can have on the course of human history. Although great explorers reached the shores of this continent both before and after Columbus, few have captured the American imagination as he has. Perhaps because we have always been an adventurous people, eager for challenge and change, we feel a special affinity for this extraordinary man who left the safety of known waters to pursue his vision across the ocean to the threshold of a new world.

Although his momentous voyages across the Atlantic took place more than 500 years ago, their impact can still be felt today. Columbus' discoveries in the West Indies brought about substantive and continuing contact between the peoples of the Old World and the New, contact that gave rise to misunderstandings and conflicts that we still seek to reconcile today. He also made possible the exploration and settlement of North America and opened the door to our continent for generations to follow—people of every race and culture and ethnic origin, who have given our Nation its rich and unique diversity. Christopher Columbus, a son of Italy whose bold enterprise was made possible by the Spanish crown, holds a special place in the hearts of Americans of Italian and Spanish heritage. But, as we prepare for our own voyage of discovery into the next millennium, all Americans can draw inspiration from the character and accomplishments of Columbus. With vision, courage, imagination, and optimism, we can create a future bright with promise and a new world where all of us can pursue our dreams.

In recognition of the enduring achievements of Christopher Columbus, the Congress, by joint resolution of April 30, 1934 (48 Stat. 657), and an Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as ''Columbus Day.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 13, 1997, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 97–27541
Filed 10–14–97; 8:45 am]
Billing code 3195–01–P

Federal Register

Wednesday
October 15, 1997

# Part IV

# The President

## Proclamation 7040—National Children's Day, 1997

Federal Register
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Wednesday, October 15, 1997

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7040 of October 10, 1997**

## National Children's Day, 1997

**By the President of the United States of America**

**A Proclamation**

With the birth of every child, the world becomes new again. Within each new infant lies enormous potential—potential for loving, for learning, and for making life better for others. But this potential must be nurtured. Just as seeds need fertile soil, warm sunshine, and gentle rain to grow, so do our children need a caring environment, the security of knowing they are loved, and the encouragement and opportunity to make the most of their God-given talents. There is no more urgent task before us, as a people and as a Nation, than creating such an environment for America's children.

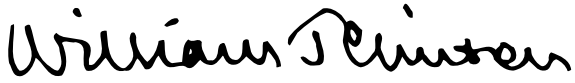
One of the surest ways to do so is to strengthen American families and help parents in their efforts to raise healthy, happy children. My Administration has worked hard to give parents the tools they need to fulfill their crucial responsibilities. We have sought to put tobacco and guns out of the reach of children. We are improving the quality of our children's schools by making a national commitment to high academic and teaching standards. Recognizing the importance of a child's early years to his or her development, we have expanded Head Start and established Early Head Start for low-income families with children 3 years old or younger. We have made it easier for millions of parents to take time off to be with a sick child without losing their jobs, and to keep their health insurance when they change jobs. We have protected Medicaid coverage for 36 million Americans, including about 20 million children, and the Balanced Budget Act I recently signed into law will provide meaningful health care coverage to millions more uninsured children.

But there is still much to be accomplished if we are to ensure that America's children grow up to meet their fullest potential. Our next important goal must be to build upon our efforts and improve the quality and affordability of child care in our Nation. With more people in the work force, with more single-parent homes, and with more families in which both parents have to work to make ends meet, millions of American children are already in some form of day care, and the demand for affordable, quality child care is growing. Later this month, the First Lady and I will host the White House Conference on Child Care to work with and learn from other parents, child care providers and experts, business leaders, and economists. Together we will focus on the best means to increase the quality, availability, and affordability of child care in our Nation.

As we observe National Children's Day this year, let us recommit ourselves to creating a society where parents can raise healthy, happy children; where every newborn is cherished, where every child is encouraged to succeed, and where all our young people are free to pursue their dreams.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 12, 1997, as National Children's Day. I urge all Americans to express their love and appreciation for children on this day and on every day throughout the year. I invite Federal officials, State and local governments, and particularly all American families to join together in observing this day with appropriate ceremonies and activities to honor our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 97–27583
Filed 10–14–97; 11:16 am]
Billing code 3195–01–P

Federal Register

Wednesday
October 15, 1997

Part V

# Office of Management and Budget

**Cancellation Pursuant to Line Item Veto Act; Department of Defense Appropriation Act, 1998; Notices**

## OFFICE OF MANAGEMENT AND BUDGET

### Cancellation Pursuant to Line Item Veto Act; Department of Defense Appropriations Act, 1998

October 14, 1997.

One Special Message from the President under the Line Item Veto Act is published below. The President signed this message on October 14, 1997. Under the Act, the message is required to be printed in the **Federal Register** (2 U.S.C. 691a(c)(2)).

**Clarence C. Crawford,**

*Associate Director for Administration.*

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THE WHITE HOUSE,
Washington,
*October 14, 1997.*

Dear Mr. Speaker:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the ''Department of Defense Appropriations Act, 1998'' (Public Law 105–56; H.R. 2266). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitute a special message under section 1022 of the Congressional Budget and Compoundment Act of 1974, as amended.

Sincerely,

*William J. Clinton.*

The Honorable Newt Gingrich,
*Speaker of the House of Representatives, Washington, D.C. 20515.*

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THE WHITE HOUSE,
Washington,
*October 14, 1997.*

Dear Mr. President:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the ''Department of Defense Appropriations Act, 1998'' (Public Law 105–56; H.R. 2266). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitute a special message under section 1022 of the Congressional Budget and Compoundment Act of 1974, as amended.

Sincerely,

*William J. Clinton.*

The Honorable Albert Gore, Jr.,
*President of the Senate, Washington, D.C. 20510.*

Cancellation No. 97–42

### CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266).

**1(A). Dollar Amount of Discretionary Budget Authority:** $30,000 thousand for Operation and Maintenance, Air Force project ''SR–71'' on page 75 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would provide manning, operations and support to sustain SR–71 training requirements during fiscal year 1998 and provide for a 30-day operational deployment capability. The SR–71 is a high-speed, high-altitude, long-range, multi-sensor, all-weather, wide-area surveillance aircraft. There is no military requirement to continue to operate the SR–71. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −21,870 |
| 1999 | −6,480 |
| 2000 | −900 |
| 2001 | −270 |
| 2002 | −120 |
| Total | −30,000 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$30,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Defense.

**2(A). Bureau:** Operation and Maintenance.

**2(A). Governmental Function/Project (Account):** SR–71 (Operation and Maintenance, Air Force).

**2(B). States and Congressional Districts Affected:** California, 21st Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** California: five; 21st District: one.

Cancellation No. 97–43

### CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266)

**1(A). Dollar Amount of Discretionary Budget Authority:** $9,000 thousand for Aircraft Procurement, Air Force, project ''SR–71 Mods'' on page 103 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would modify cameras, enhance radar processing, install a Global Positioning System navigation system, and improve electronic intelligence for the SR–71 reconnaissance aircraft. The SR–71 is a high-speed, high-altitude, long-range, multi-sensor, all-weather, wide-area surveillance aircraft. There is no military requirement to continue to operate the SR–71. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −711 |
| 1999 | −2,169 |
| 2000 | −2,961 |
| 2001 | −1,782 |
| 2002 | −765 |
| Total | −9,000 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$9,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Defense.

**2(A). Bureau:** Aircraft Procurement.

**2(A). Governmental Function/Project (Account):** SR–71 Modifications (Aircraft Procurement, Air Force).

**2(B). States and Congressional Districts Affected:** California, 25th Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** California: six; 25th District: one.

Cancellation No. 97–44

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266)

**1(A). Dollar Amount of Discretionary Budget Authority:** $4,000 thousand for the Research, Development, Test and Evaluation, Army project titled ''Gallo Center'' on page 112 of House Report 105–265 dated September 23, 1997, and page 166 of House Report 105–206 dated July 25, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** The President's FY 1998 Budget supports ongoing work to demonstrate and export new environmentally acceptable technology to the industrial base and to train the industrial base on the use of new technology. The appropriated increase would support life-cycle environmental and manufacturing technologies research specifically related to weapons systems and munitions technology assessment and analysis. The Army does not believe this additional research merits funding at this time.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −2,320 |
| 1999 | −1,320 |
| 2000 | −212 |
| 2001 | −72 |
| 2002 | −32 |
| Total | −4,000 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$4,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Defense.

**2(A). Bureau:** Research, Development, Test and Evaluation.

**2(A). Governmental Function/Project (Account):** Gallo Center (Research, Development, Test and Evaluation, Army).

**2(B). States and Congressional Districts Affected:** New Jersey, 11th Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** New Jersey: one; 11th District: one.

Cancellation No. 97–45

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266).

**1(A). Dollar Amount of Discretionary Budget Authority:** $6,000 thousand for the Research, Development Test and Evaluation, Army project ''Molten Carbonate Fuel Cells Technology'' on page 113 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would research and develop alternative fuel cell technology that converts chemical energy to electricity. It has primary applications for the Department of Energy which has responsibility for alternative energy research. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −3,480 |
| 1999 | −1,980 |
| 2000 | −318 |
| 2001 | −108 |
| 2002 | −48 |
| Total | −6,000 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$6,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Defense 2(A).

**Bureau:** Research, Development, Test and Evaluation.

**2(A). Governmental Function/Project (Account):** Molten Carbonate Fuel Cells Technology (Research, Development, Test and Evaluation, Army).

**2(B). States and Congressional Districts Affected:** Unknown.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Unknown.

Cancellation No. 97–46

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266)

**1(A). Dollar Amount of Discretionary Budget Authority:** $3,000 thousand for the Research, Development Test and Evaluation, Army project ''Periscopic Minimally-Invasive Surgery'' on page 113 and 116 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would research less-invasive surgery techniques that could potentially result in faster healing, less hospital time, and reduced costs. However, the Department already funds microsurgery programs with specific military applications. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| | |
|---|---|
| Fiscal year: | |
| 1998 | −1,740 |
| 1999 | −990 |
| 2000 | −159 |
| 2001 | −54 |
| 2002 | −24 |
| Total | −3,000 |

**1(F). Adjustments o Defense Discretionary Spending Limits**

**Budget Authority:** −$3,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). AGENCY:** Department of Defense.

**2(A). Bureau:** Research, Development, Test and Evaluation.

**2(A). Governmental Function/Project (Account):** Periscopic Minimally-Invasive Surgery (Research, Development, Test and Evaluation, Army).

**2(B). States and Congressional Districts Affected:** Unknown.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Unknown.

Cancellation No. 97–47

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266).

**1(A). Dollar Amount of Discretionary Budget Authority:** $4,000 thousand for the Research, Development Test and Evaluation, Army project ''Proton Beam'' on page 113 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would research a new machine that delivers radiation therapy for cancer treatment. The appropriated funds constitute a grant to a private organization for medical research that should be funded through a peer review process. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| | |
|---|---|
| Fiscal year: | |
| 1998 | −2,320 |
| 1999 | −1,320 |
| 2000 | −212 |
| 2001 | −72 |
| 2002 | −32 |
| Total | −4,000 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$4,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Defense.

**2(A). Bureau:** Research, Development, Test and Evaluation.

**2(A). Governmental Function/Project (Account):** Proton Beam (Research, Development, Test and Evaluation, Army).

**2(B). States and Congressional Districts Affected:** California, 40th Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** California: seven; 40th District: three.

Cancellation No. 97–48

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266)

**1(A). Dollar Amount of Discretionary Budget Authority:** $3,000 thousand for a Research, Development, Test, and Evaluation, Navy project ''Terfenol-D'' on pages 119 and 122 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project is intended to enable the Navy to achieve further cost reductions in the

application of a magnetorestrictive, iron/terbium/dysprosium alloy for new high performance sonar systems. This effort is to be undertaken through a partnership between any entity which has made a financial commitment and has experience in the production of the alloy and the National Center of Excellence in Metal Working Technology. The Navy has no military requirement for this technology. This project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −1,603 |
| 1999 | −1,008 |
| 2000 | −253 |
| 2001 | −60 |
| 2002 | −33 |
| Total | −3,000 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$3,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Defense.

**2(A). Bureau:** Research, Development, Test, and Evaluation.

**2(A). Governmental Function/Project (Account):** Terfenol-D (Research, Development, Test, and Evaluation, Navy).

**2(B). States and Congressional Districts Affected:** Pennsylvania, 12th Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Pennsylvania: three; 12th District: two.

Cancellation No. 97–49

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266).

**1(A). Dollar Amount of Discretionary Budget Authority:** $3,000 thousand for a Research, Development, Test, and Evaluation, Navy project for ''COTS airgun as an acoustic source'' on page 120 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would continue development, testing, and calibration of components for a mobile, high power broadband acoustic surveillance source that is based upon the adaptation of commercial air-gun technology. Technical review in the Department of Defense has concluded that this technology will not be effective, except in shallow water regions where there are no current requirements. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −1,603 |
| 1999 | −1,008 |
| 2000 | −253 |
| 2001 | −60 |
| 2002 | −33 |
| Total | −3,000 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$3,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). AGENCY:** Department of Defense.

**2(A). Bureau:** Research, Development, Test, and Evaluation.

**2(A). Governmental Function/Project (Account):** COTS airgun as an acoustic source (Research, Development, Test, and Evaluation, Navy).

**2(B). States and Congressional Districts Affected:** Unknown.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Unknown.

Cancellation No. 97–50

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266).

**1(A). Dollar Amount of Discretionary Budget Authority:** $10,000 thousand for Research, Development, Test and Evaluation, Air Force project ''Military Spaceplane'' on page 125 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would fund research into hypersonic technologies and is intended to complement NASA's reusable launch vehicle program. However, NASA, not the Department of Defense, is responsible for the development of reusable launch vehicles. The project is being canceled because it was not requested in the President's FY 1998 Budget, and because the Department of Defense has determined that it would not make a significant contribution to US military capability.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −4,272 |
| 1999 | −4,272 |
| 2000 | −887 |
| 2001 | −357 |
| 2002 | −116 |
| Total | −10,000 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$10,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Defense.

**2(A). Bureau:** Research, Development, Testing and Evaluation.

**2(A). Governmental Function/Project (Account):** Military Spaceplane (Research, Development, Testing and Evaluation, Air Force).

**2(B). States and Congressional Districts Affected:** New Mexico, 1st Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** New Mexico: three; 1st District: two.

Cancellation No. 97–51

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266).

**1(A). Dollar Amount of Discretionary Budget Authority:** $30,000 thousand for Research, Development, Test and Evaluation, Air Force project ''Clementine'' on page 125 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would test and demonstrate microelectronics for acquisition tracking and intercept of an asteroid in space using a mothership integrated with three microsatellites. The scientific objective of the mission is to obtain data on the asteroid. The project's key military application would be for space-based missile defense. The project is being canceled because it was not requested in the President's FY 1998 Budget; it was not in the Department of Defense Future Years Defense Plan; and its key military application is not part of the Department's national missile defense readiness plan.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −12,817 |
| 1999 | −12,820 |
| 2000 | −2,662 |
| 2001 | −1,071 |
| 2002 | −347 |
| Total | −30,000 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$30,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments Upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Defense.

**2(A). Bureau:** Research, Development, Testing and Evaluation.

**2(A). Governmental Function/Project (Account):** Clementine (Research, Development, Testing and Evaluation, Air Force).

**2(B). States and Congressional Districts Affected:** New Mexico, 1st Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** New Mexico: four; 1st District: three.

Cancellation No. 97–52

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266)

**1(A). Dollar Amount of Discretionary Budget Authority:** $1,500 thousand for Research, Development, Test and Evaluation, Air Force project ''Optical Correlator Technology'' on page 125 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would conduct research and development to attempt to improve optical correlator technology. The project is being canceled because it was not requested in the President's FY 1998 Budget, and because the Department of Defense has determined that it would not make a significant contribution to U.S. military capability.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars)

| Fiscal year: | |
|---|---|
| 1998 | −641 |
| 1999 | −641 |
| 2000 | −133 |
| 2001 | −54 |
| 2002 | −17 |
| Total | −1,500 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$1,500 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Defense.

**2(A). Bureau:** Research, Development, Testing and Evaluation.

**2(A). Governmental Function/Project (Account):** Optical Correlator Technology (Research, Development, Testing and Evaluation, Air Force).

**2(B). States and Congressional Districts Affected:** Unknown.

**2(C) Total Number of Cancellations (inclusive) in Current Session in each**

**State and District identified above:** Unknown.

Cancellation No. 97–53

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266).

**1(A). Dollar Amount of Discretionary Budget Authority:** $37,500 thousand for Research, Development, Test and Evaluation, Defense-wide project ''ASAT'' on page 130 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would fund a technology demonstration experiment to prove the feasibility of launching a seeker that would smash into an enemy's satellite, thereby disabling it. However, alternative means exist for addressing a satellite threat, such as destroying ground stations or disrupting satellite communications links. This item is being canceled because it was not requested in the President's FY 1998 Budget; it was not in the Department of Defense Future Years Defense Plan; and there are alternative ways to disrupt enemy satellite capabilities.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −16,313 |
| 1999 | −15,000 |
| 2000 | −4,500 |
| 2001 | −563 |
| 2002 | −563 |
| Total | −37,500 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$37,500 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above. 2(A).

**2(A). Agency:** Department of Defense.

**2(A). Bureau:** Research, Development, Testing and Evaluation.

**2(A). Governmental Function/Project (Account):** ASAT (Research, Development, Testing and Evaluation, Defense-wide).

**2(B). States and Congressional Districts Affected:** California, 23rd and/or 24th Congressional Districts.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** California: eight; 23rd District: one; 24th District: one.

Cancellation No. 97–54

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266).

**1(A). Dollar Amount of Discretionary Budget Authority:** $2,000 thousand for Research, Development, Test and Evaluation, Defense-wide project ''Risk-based toxic chemicals research'' on page 133 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would address questions relating to establishment of cleanup criteria for toxic chemicals associated with base operations and for remediation of waste sites. It would duplicate ongoing research being conducted by the Department of Defense. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −870 |
| 1999 | −800 |
| 2000 | −240 |
| 2001 | −30 |
| 2002 | −30 |
| Total | −2,000 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$2,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Defense.

**2(A). Bureau:** Research, Development, Testing and Evaluation.

**2(A). Governmental Function/Project (Account):** Risk-based toxic chemicals research (Research, Development, Testing and Evaluation, Defense-wide).

**2(B). States and Congressional Districts Affected:** Unknown.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Unkown.

Cancellation No. 97–55

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Defense Appropriations Act, 1998'' (H.R. 2266).

**1(A). Dollar Amount of Discretionary Budget Authority:** $1,000 thousand for Research, Development, Test and Evaluation, Defense-wide project ''Defense Techlink rural technology transfer'' on page 133 of House Report 105–265 dated September 23, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would develop a rural technology model

of a five state rural region of Montana, North Dakota, South Dakota, Wyoming and Idaho. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| | |
|---|---|
| Fiscal year: | |
| 1998 | −435 |
| 1999 | −400 |
| 2000 | −120 |
| 2001 | −15 |
| 2002 | −15 |
| Total | −1,000 |

**1(F). Adjustments to Defense Discretionary Spending Limits**

**Budget Authority:** −$1,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Defense.

**2(A). Bureau:** Research, Development, Testing and Evaluation.

**2(A). Governmental Function/Project (Account):** Defense Techlink rural technology transfer (Research, Development, Testing and Evaluation, Defense-wide).

**2(B). States and Congressional Districts Affected:** Idaho, Montana, North Dakota, South Dakota, Wyoming; Congressional Districts unknown.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Idaho: three; Montana: two; North Dakota: one; South Dakota: two; Wyoming: one.

[FR Doc. 97–27659 Filed 10–14–97; 4:47 pm]

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**Federal Register**

Vol. 62, No. 199

Wednesday, October 15, 1997

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## 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 OCTOBER 15, 1997

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**Agricultural Marketing Service**

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**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Interstate transportation of animals and animal products (quarantine):

Brucellosis in cattle—

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**Foreign-Trade Zones Board**

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**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

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Biological establishments; responsible head or designated qualified person; requirements revision; published 10-15-97

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**Federal Aviation Administration**

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**Rural Housing Service**

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**H.R. 394/P.L. 105–59**

To provide for the release of the reversionary interest held by the United States in certain property located in the County of Iosco, Michigan. (Oct. 10, 1997; 111 Stat. 1268)

**H.R. 1948/P.L. 105–60**

Hood Bay Land Exchange Act of 1997 (Oct. 10, 1997; 111 Stat. 1269)

**H.R. 2378/P.L. 105–61**

Treasury and General Government Appropriations Act, 1998 (Oct. 10, 1997; 111 Stat. 1272)

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