7–1–98
Vol. 63 No. 126
Pages 35787–36150

federal register

Wednesday
July 1, 1998

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Contents

Federal Register

Vol. 63, No. 126

Wednesday, July 1, 1998

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Brownfields decisions and actions; local public health departments participation, 35933–35937

Agriculture Department
See Forest Service
RULES
Organization, functions, and authority delegations:
Administrator, Food and Nutrition Service, 35787

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Aluminum Company of America, et al., 35946–35954

Army Department
See Engineers Corps
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35915
Meetings:
Army Education Advisory Committee, 35915

Census Monitoring Board
NOTICES
Meetings, 35906

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 35906

Coast Guard
RULES
Drawbridge operations:
Louisiana, 35820–35822
Merchant marine officers and seamen:
Tankerman and persons in charge of dangerous liquids and liquefied gases transfers; qualification
Compliance dates establishment, 35822–35826
Vocational rehabilitation and education:
Veterans education—
Educational assistance when educational institutions fail to meet requirements;payments suspension and discontinuance, 35830–35837

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
New York Cotton Exchange—
Cantor Financial Futures Exchange, Inc., 35912–35914
Senior Executive Service:
Performance Review Board; membership, 35914

Community Development Financial Institutions Fund
NOTICES
Meetings:
Community Development Advisory Board, 36034

Comptroller of the Currency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36034–36035

Copyright Office, Library of Congress
NOTICES
Copyright arbitration royalty panel; digital phonorecord delivery rate adjustment proceeding, 35984

Customs Service
RULES
Recordkeeping, inspection, search, and seizure:
Prior disclosure of previous entry of merchandise into U.S by fraud, gross negligence or negligence; formal investigation commencement
Correction, 35798

Defense Department
See Army Department
See Engineers Corps
RULES
Federal Acquisition Regulation (FAR):
Federal procurement; affirmative action reform, 36119–36127
Small entity compliance guide, 36128
Vocational rehabilitatiion and education:
Veterans education-
Educational assistance when educational institutions fail to meet requirements; payments suspension and discontinuance, 35830–35837
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35915

Drug Enforcement Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35954–35955

Education Department
RULES
Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations, 36143–36145
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35916–35918
Submission for OMB review; comment request, 35918

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
RULES
Water resource development projects; public use; shoreline use permits; floatation materials, 35826–35828

NOTICES
Environmental statements; notice of intent:
PCS Phosphate, White-Springs, FL; mining operations, 35916
Nationwide permits (NWP's); issuance, reissuance, and modification, 36039–36078

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 35842–35844
Indiana, 35837–35839
Texas, 35839–35841
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Sodium chlorate, 35844–35846
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 35896
Indiana, 35895
Texas, 35895–35896
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35925–35928

Executive Office of the President
See Presidential Documents
See Science and Technology Policy Office
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
AlliedSignal Inc., 35787–35790
British Aerospace, 35793–35794
Cessna, 35796–35797
de Havilland, 35792–35793
Dornier, 35790–35792
Pratt & Whitney Canada, 35794–35796
PROPOSED RULES
Airworthiness directives:
First Technology Fire & Safety Ltd., 35884–35886
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 36009–36010

Federal Communications Commission
RULES
Practice and procedure:
Regulatory fees (1998 FY); assessment and collection, 35847–35881
PROPOSED RULES
Frequency allocations and radio treaty matters:
Radio frequency devices capable of causing harmful interference; importation, 35901–35902
NOTICES
Common carrier services:
Universal service contribution factors, 35930–35931

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36034–36035
Meetings; Sunshine Act, 35931

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
California Independent System Operator Corp. et al., 35921–35924
Environmental statements; availability, etc.:
Duke Power Co., 35924
Environmental statements; notice of intent:
Alaska Power & Telephone Co., 35924–35925
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 35918–35919
Columbia Gas Transmission Corp., 35919
HDI Associates III, 35919
Koch Gateway Pipeline Co., 35920
National Fuel Gas Supply Corp., 35920
Newfound Hydroelectric Co., 35920
Public Utility District No. 1 of Pend Oreille County, WA, 35920–35921
W.M. Lord Excelsior (Union Village Dam), 35921

Federal Labor Relations Authority
PROPOSED RULES
Presidenial and Executive Office Accountability Act; implementation:
Issues that have arisen as agency carries out its responsibilities; regulatory review, 35882–35884

Federal Maritime Commission
PROPOSED RULES
Independent Offices Appropriations Act; implementation:
User fees for services and benefits; existing fees updated and new filing and and service fees added, 35896–35901
NOTICES
Agreements filed, etc., 35931
Freight forwarder licenses:
International Traffic & Logistics, 35931

Federal Reserve System
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36034–36035
Banks and bank holding companies:
Change in bank control, 35931–35932
Formations, acquisitions, and mergers, 35932
Permissible nonbanking activities, 35932–35933

Federal Transit Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36010

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Book-entry Treasury bonds, notes, and bills:
Securities in book-entry form held through financial intermediaries ''TRADES'' regulations, 35807–35808
NOTICES
Surety companies acceptable on Federal bonds:
Alleghany Mutual Casaulty Co., 36036
Surety companies acceptable on Federal bonds; annual list, 36079–36117

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 35939
Environmental statements; availability, etc.:
Bitter Lake National Wildlife Refuge, NM, 35939

Food and Drug Administration
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
Cetylmethyl, dimethyl, methyl 11-methoxy-11-oxoundecyl, 35798–35799
NOTICES
Reports and guidance documents; availability, etc.:
Medical product promotion by healthcare organizations or pharmacy benefits management companies; industry guides, 35937–35938

Foreign Assets Control Office
RULES
Cuban assets control regulations, Iranian transactions regulations, and reporting and procedures regulations:
Travel transactions, awards payment authorization, and consolidation and standardization of information collection provisions, etc.
Corrections, 35808–35809
Sudanese sanctions regulations, 35809–35820

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California, 35906–35907
Colorado
Artesyn Technologies (Inc.); electric power supply manufacturing plant, 35907
Minnesota
Artesyn Technologies (Inc.); electric power supply manufacturing facilities, 35907–35908
Puerto Rico, 35908
Tennessee
Komatsu America International Co., Inc.; warehousing/distribution facility, 35908
Washington, 35908
Darigold, Inc.; manufacturing/processing activity, 35909

Forest Service
NOTICES
Environmental statements; notice of intent:
Silver Bow and Jefferson County, MT; Whitetail-Pipestone recreation management, 35903–35904
Targhee National Forest,ID, 35904–35905
Meetings:
Scientists Committee, 35905–35906

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Federal procurement; affirmative action reform, 36119–36127
Small entity compliance guide, 36128
Federal property management:
Buildings and space—
Tobacco smoking policy, 35846

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See Health Resources and Services Administration
RULES
Health resources development:
Organ procurement and transplantation network; operation and performance goals, 35847
NOTICES
Scientific misconduct findings; administrative actions:
Reisine, Terry D., Ph.D., 35933

Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
National Health Service Corps Division, Primary Health Care Bureau, 35938–35939

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Portfolio reengineering transition program, 36129–36133

Indian Affairs Bureau
NOTICES
Environmental statements; notice of intent:
Muckleshoot Indian Reservation, WA; White River ampitheatre, 35939–35940

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Excise taxes:
Kerosene and aviation fuel taxes and tax on heavy vehicles, 35799–35805
PROPOSED RULES
Excise taxes:
Kerosene and aviation fuel taxes and tax on heavy vehicles, 35893–35895

International Trade Administration
NOTICES
Antidumping:
Melamine institution dinnerware from—
Indonesia, 35910–35911
Antidumping and countervailing duties:
Administrative review requests, 35909–35910
Cheese quota; foreign government subsidies:
Quarterly update, 35911–35912
Applications, hearings, determinations, etc.:
Emory University et al., 35911
University of—
California, 35911

International Trade Commission
NOTICES
Import investigations:
Extruded rubber thread from—
Malaysia, 35945

Justice Department
See Antitrust Division
See Drug Enforcement Administration

NOTICES
Pollution control; consent judgments:
Ford Motor Co., 35945–35946
Reynolds, 35946

Labor Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Women in Apprenticeship and Nontraditional Occupations Act—
Demonstration program, 35955–35983

Land Management Bureau
NOTICES
Environmental statements; notice of intent:
Silver Bow and Jefferson Counties, MT, management plans, 35903–35904
Motor vehichle use restrictions:
Wyoming, 35940–35941
Public land orders:
California, 35941
Oregon, 35941
Washington, 35941–35942
Recreation management restrictions, etc.:
South Yuba River, CA; supplementary rule, 35942–35943

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Alaskan Beaufort Sea—
Oil and gas lease sales, 35943–35944

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Federal procurement; affirmative action reform, 36119–36127
Small entity compliance guide, 36128
NOTICES
Inventions, Government-owned; availability for licensing, 35985

National Archives and Records Administration
RULES
Records management:
Technical amendments, 35828–35830

National Credit Union Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35985

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities:
Proposed collection; request for comment, 36010–36012
Grants and cooperative agreements; availability, etc.:
Pedestrian safety; large city/jurisdiction demonstration and evaluation program, 36012–36018

National Institute of Standards and Technology
NOTICES
Meetings:
Weights and Measures National Conference, 35912

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Southern Nuclear Operating Co., Inc., 35985–35986
Meetings:
Reactor Safeguards Advisory Committee, 35986
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 35986–36002

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidential Documents
ADMINISTRATIVE ORDERS
Korean Peninsula Energy Development Organization:
U.S. assistance (Presidential Determination No. 98-31 of June 19, 1998), 36147–36147

Public Debt Bureau
See Fiscal Service

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See Health Resources and Services Administration

Reclamation Bureau
NOTICES
Concession contract negotiations:
Colorado River; use of paddle craft, 35945

Research and Special Programs Administration
NOTICES
Pipeline Risk Management Demonstration Program:
Participants—
Mobil Pipe Line Co., 36018–36024
Phillips Pipe Line Co., 36024–36030
Pipeline safety:
National pipeline mapping system; public workshop, 36030–36031

Science and Technology Policy Office
NOTICES
Enhancing Federal training and education through technology, 35928–35929

Securities and Exchange Commission
PROPOSED RULES
Securities:
Options disclosure documents—
Rule 135b revision, 36135–36138
Rule 9b-1 amendments, 36138–36141
Technical amendments; segment reporting, 35886–35893
NOTICES
Meetings; Sunshine Act, 36007–36008
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 36008–36009
Applications, hearings, determinations, etc.:
GST Telecommunications, Inc., 36002
M&T Bank Corp., 36002–36003
Oak Industries, Inc., 36003
PaineWebber America Fund, et al., 36003–36007

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 35805–35807

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern and Santa Fe Railway Co., et al., 36031–36032
Genesee & Wyoming, Inc., et al., 36032
Golden Isles Terminal Railroad, Inc., 36032–36033
Savannah Port Terminal Railroad, Inc., et al., 36033
Railroad services abandonment:
Maine Central Railroad Co., 36033–36034

Thrift Supervision Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36036–36037

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States
NOTICES
Meetings:
Industry Sector Advisory Committee—
Small and minority business, 36009

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 36009

Treasury Department
See Community Development Financial Institutions Fund
See Comptroller of the Currency
See Customs Service
See Fiscal Service
See Foreign Assets Control Office
See Internal Revenue Service
See Thrift Supervision Office

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Living Memory to the Holocaust, 36037
Saints and Sinners: Caravaggio's Italy, 36037–36038

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Veterans education—
Educational assistance when educational institutions fail to meet requirements; payments suspension and discontinuance, 35830–35837

Separate Parts In This Issue

Part II
Department of Defense, Engineers Corps, 36039–36078

Part III
Department of Treasury, Fiscal Service , 36079–36117

Part IV
Department of Defense, National Aeronautics and Space Administration, General Services Administration, 36119–36128

Part V
Department of Housing and Urban Development, 36129–36133

Part VI
Securities and Exchange Commission, 36135–36141

Part VII
Department of Education, 36143–36145

Part VIII
The President, 36147–36149

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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.

3 CFR
Administrative Orders:
Presidential Orders:
No. 98–31 36149

5 CFR
Proposed Rules:
2420 35882
2421 35882
2422 35882
2423 35882
2470 35882
2472 35882

7 CFR
2 35787

14 CFR
39 (6 documents) 35787, 35790, 35792, 35793, 35794, 35796
Proposed Rules:
39 35884

17 CFR
Proposed Rules:
210 35886
229 35886
230 36136
240 (2 documents) 35886, 36138
249 35886

19 CFR
162 35798
178 35798

21 CFR
178 35798

26 CFR
48 35799
145 35799
602 35799
Proposed Rules:
48 35893

30 CFR
901 35805

31 CFR
357 35807
501 35808
515 35808
538 35809
560 35808

33 CFR
117 35820
155 35822

34 CFR
74 36144
80 36144

36 CFR
327 35826
1220 35828
1222 35828
1228 35828
1230 35828
1234 35828
1238 35828

38 CFR
21 35830

40 CFR
52 (3 documents) 35837, 35839, 35842
180 35844
Proposed Rules:
52 (3 documents) 35895, 35896

41 CFR
101-20 35846

42 CFR
121 35847

46 CFR
Proposed Rules:
502 35896
503 35896
510 35896
514 35896
540 35896
572 35896
585 35896
587 35896
588 35896

47 CFR
1 35847
Proposed Rules:
2 35901

48 CFR
Ch. 1 36128
1 36120
12 36120
15 36120
19 36120
52 36120
53 36120

Rules and Regulations

Federal Register
Vol. 63, No. 126
Wednesday, July 1, 1998

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, Department of Agriculture.

ACTION: Final Rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to change the name of the Food and Consumer Service to the Food and Nutrition Service.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mildred Kelley, Human Resources Division, Department of Agriculture, 3101 Park Center Drive, Room 623, Alexandria, VA 22302, telephone (703) 305–1064.

SUPPLEMENTARY INFORMATION: The agency name of the Food and Consumer Service was changed to its former name of the Food and Nutrition Service by order of the Secretary of Agriculture on November 25, 1997. The purpose of the final rule is to change the name of the Food and Consumer Service to the Food and Nutrition Service in the delegations of authority from the Secretary, through the Under Secretary for Food, Nutrition, and Consumer Services to the Administrator of the Food and Consumer Service.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders Nos. 12866 and 12988. Finally, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. *et seq.*) and the Small Business Regulatory Fairness Enforcement Act (5 U.S.C. 801 *et. seq.*) and, thus, is exempt from their provisions.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for 7 CFR part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., P. 1024.

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

2. Section 2.57 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 2.57 Administrator, Food and Nutrition Service.

(a) *Delegations.* Pursuant to § 2.19(a)(1), (a)(2) and (a)(5), subject to reservations in § 2.91(b), the following delegations of authority are made by the Under Secretary for Food, Nutrition, and Consumer Services to the Administrator, Food and Nutrition Service:

* * * * *

Dated: June 5, 1998.

Shirley R. Watkins,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 98–17439 Filed 6–30–98; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–30–AD; Amendment 39–10637; AD 98–14–03]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. KT 76A Air Traffic Control (ATC) Transponders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain AlliedSignal Inc. (AlliedSignal) KT 76A ATC transponders that are installed on aircraft. This AD requires incorporating a modification on the affected transponders that consists of replacing two resistor network modules with glass-coated modules. This AD is the result of reports of these ATC transponders transmitting misleading encoding altimeter information to ground-based ATC radar sites and nearby Traffic Alert and Collision Avoidance System (TCAS)-equipped aircraft. The actions specified by this AD are intended to prevent the transmission of misleading encoding altimeter information between affected aircraft caused by the inability of these ATC transponders to coordinate with ground-based ATC radar sites and nearby TCAS-equipped aircraft.

DATES: Effective August 16, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 16, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from AlliedSignal Inc., General Aviation Avionics, 400 N. Rogers Road, Olathe, Kansas 66062–1212. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–30–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain AlliedSignal KT 76A ATC transponders that are installed on aircraft was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 4, 1998 (63 FR 5763). The NPRM proposed to require replacing two resistor network modules, RM401 and RM402, with new glass-coated parts. Accomplishment of the proposed action as specified in the NPRM would be in accordance with AlliedSignal Service Bulletin SB KT 76A–7, dated July 1996.

The NPRM was the result of reports of these ATC transponders transmitting misleading encoding altimeter information to ground-based ATC radar sites and nearby Traffic Alert and Collision Avoidance System (TCAS)-equipped aircraft.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comment Issue: The Compliance Time Should Be Extended

Three commenters believe that the proposed compliance time of 6 calendar months is unrealistic. These comments are detailed as follows:

1. One commenter states that, in order to accomplish the work, Allied Signal would have to supply 38 repairmen who would work 8 hours per day for 6 months. The commenter questions whether this commitment will be made.

2. Another commenter agrees with the FAA's decision to state the compliance in calendar time, but believes that a more appropriate and more convenient time would be to require the work at the next annual inspection or transponder system inspection. This would reduce the down-time for the affected aircraft by allowing the work to be accomplished during regularly scheduled maintenance.

3. The third commenter states that many of the affected transponders will be part of a complete pitot-static system that requires biennial calibration in accordance with § 91.413 of the Federal Aviation Regulations (14 CFR 91.413). The commenter proposes that since the unit will already be at the avionics shop for this calibration, then the FAA should write the compliance time to coincide with the biennial pitot-static system calibration.

The FAA partially concurs with the above comments, as follows:

1. After re-evaluating all information related to this subject, the FAA concurs that 6 calendar months is an unrealistic time period to have the work accomplished on all of the affected transponders. The FAA believes that a large number of the affected aircraft already have the proposed modification incorporated on the transponder. Based on all information, the FAA believes that a 12 calendar month compliance time is more realistic. The final rule will reflect this change.

2. The 12 calendar month compliance time will allow the modification to be incorporated during the airplane's next annual inspection, as requested by the commenter.

3. Because the silver migration process is affected by environmental factors as well as occurring over time, the FAA cannot predict when a particular transponder could fail. A transponder could work well one day and then fail the next day. With this in mind, the FAA does not concur that the compliance time should be written to coincide with the next pitot-static system biennial calibration in accordance with § 91.413 of the Federal Aviation Regulations (14 CFR 91.413). This could allow the condition defined in this AD to go undetected for up to 24 months.

Comment Issue: Problem Occurs Only on Aircraft Operating Above 10,000 Feet and the AD Should Be Limited to Only Those Aircraft Operating in Instrument Flight Rule (IFR) Conditions

Two commenters believe that the condition specified in the NPRM is associated with ''at altitude'' operations over time. The commenters state that one could imply that:

> ''aircraft in the high altitude structure may be more likely to experience this problem than one operating below 10,000 feet and using the Allied Signal KT 76A ATC transponder simply because the aircraft operates within Class B or C airspace or within a 30 nautical miles ''veil'' for a class B airport. The problem with an erroneous altitude report from a high speed aircraft operating in the IFR airspace system is significantly different than a small airplane flying in visual flight rules (VFR) conditions.''

Both commenters recommend different actions than are already proposed based on the above information and both believe that the private operator (who is mostly a Sunday pilot) would remove the equipment from the aircraft since aircraft in VFR operation outside of the B and C airspace do not need to have a transponder unit. Both believe that removing the transponder would reduce safety. These recommendations are as follows:

1. One commenter suggests that those operating in only VFR conditions fabricate and install a placard with the words ''For VFR Use Only''. If or when these aircraft's transponders no longer comply with the 125-foot error requirement of part 43, Appendix E, of the Federal Aviation Regulations (14 CFR part 43, Appendix E), then the commenter proposes that the AD require immediate replacement or modification of the transponder equipment. The commenter feels that this would allow thousands of small aircraft to fly legally and safely within the 30 nautical mile veils associated with Class B airports, without incurring an additional expense to their flying activities.

2. The other commenter recommends that the FAA not issue the proposed AD as a final rule, or if issued, limit the Applicability of the AD to only turbine-powered or ''10-or-more seats'' aircraft. This commenter feels that replacing equipment that meets performance standards because of a ''maybe'' malfunction (which will simply cause an error in altitude reporting) is wrong when it comes to private aircraft (used mostly for pleasure). The commenter also suggests a possible mandatory replacement or modification of the equipment if a certain error is detected.

The FAA does not concur with the proposed alternatives presented by the commenters. The altitude at which an aircraft equipped with one of the affected transponders is flown and the amount of time flown at this altitude do not affect the probability of the unit failing. The ''silver migration'' process occurs regardless of the altitude or the time ''at altitude''. This ''silver migration'' process is slow and is affected by environmental factors as well. The FAA cannot assure that any given unit would not be affected by this condition during any given 2 year period. A unit could pass on one day and then fail the next day. Aircraft that are operated in VFR conditions are interrogated by TCAS-equipped aircraft in the areas. The ATC system and misleading aircraft altitude information could represent a hazard to the aircraft in VFR conditions. The FAA has determined that safety would be compromised if the AD allowed, for aircraft operating in VFR conditions, the

system to fail before mandating replacement or modification.

Comment Issue: Limit the AD to Only Those Aircraft Exhibiting Problems

In addition to the comments above proposing replacement or modification of the Allied Signal KT 76A ATC transponder upon condition for aircraft operating in VFR conditions, one commenter proposes that the AD only apply to those transponders that exhibit problems during the 24 calendar month pitot-static system calibration in accordance with § 91.413 of the Federal Aviation Regulations (14 CFR 91.413). This would be for all transponders regardless of the type of operation in which the aircraft is involved. The commenter believes that this would accomplish the intent of the AD without burdening operators already in good working order.

The FAA does not concur. As discussed earlier, the FAA cannot predict when a particular transponder could fail. A transponder could work well one day and then fail the next day. The FAA has determined that safety would be compromised if the AD allowed the system to fail before mandating replacement or modification.

Comment Issue: Wait for Results of Technical Field Study on Transponders

One commenter agrees with the FAA that the KT 76A ATC transponders have a demonstrated history of inaccurate or misleading data transmission and that corrective action is necessary to address this issue. This commenter goes on to state that the FAA Technical Center in Atlantic City conducted a full-scale field study of transponder performance in general aviation aircraft and determined that a variety of deficiencies exist in a broad range of transponders, including the KT 76A ATC transponders. This commenter suggests that the FAA withhold issuance of this AD until the full scope of the transponder issues can be addressed, including the problems associated with ''silver migration'' in the KT 76A ATC transponders.

The FAA concurs that the information from the Technical Center Study is very important. However, correspondence received from the Technical Center indicates that resolution of these issues may take a considerable amount of time. As stated earlier, the FAA cannot predict when a particular transponder could fail. A transponder could work well one day and then fail the next day. The FAA has determined that safety would be compromised if the AD was not issued awaiting a resolution from the FAA Technical Center in Atlantic City, regarding the full scope of the transponder issues.

Comment Issue: Certain Aspects Not Covered in the Cost Impact

Four commenters propose changes to the section that describes the cost impact upon the public. These include:

—It will take 2.5 workhours to accomplish the action instead of 2 workhours as presented in the NPRM;

—In addition to providing parts at no charge, Allied Signal is providing warranty credit for up to 2.5 workhours to accomplish the action;

—The cost impact should include the costs of a recalibration of the pitot-static system; and

—The cost impact does not take into account the costs the affected aircraft operators will incur while their aircraft is out-of-service.

The FAA concurs that it will take 2.5 workhours to accomplish the action and that Allied Signal will provide warranty credit for up to 2.5 workhours to accomplish the action. The final rule will incorporate this information.

The FAA does not concur that the cost impact section should account for recalibration costs because the inputs affected by the silver migration are encoding altimeter inputs and are not directly connected to the pitot static system. Therefore, there are no costs associated with pitot static system when complying with this AD.

The FAA believes that the change in the compliance time from 6 calendar months to 12 calendar months will take into account the cost impact of aircraft ''out-of-service.'' This will allow the operator to schedule the replacement and modification to coincide with a regularly schedule maintenance event, thus, the AD will not necessitate any additional downtime. Even if additional downtime is necessary for some airplanes, the FAA does not possess sufficient information to evaluate the number of airplanes that may be so affected or the amount of additional downtime that may be required.

Comment Issue: Include Statistical Data Concerning the Problem in the AD

One commenter states that including statistical data that more fully discusses the origin of the ''silver migration'' problem would be helpful.

The FAA, in working with the manufacturer, saw a three-fold increase in the usage of spare parts of the Allied Signal KT76A ATC transponders. Between the last quarter of 1995 and the first quarter of 1996, quarterly usage of spare parts increased from approximately 40 parts per quarter to approximately 120 parts for that quarter. This indicates a significant trend and failure analysis of these transponders. Information submitted to the FAA revealed that this increase in spare parts usage was due to the ''silver migration'' problem. Within a 3-month period, over 150 of these transponder units were in the repair shops to have ''silver migration'' problems remedied.

Comment Issue: Concur With the Action

One commenter agrees with the proposal as written and states that accomplishing ''this relatively inexpensive and simple repair action will eliminate the potential hazard and enhance general flying safety in the National Airspace System.''

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the compliance time and minor editorial corrections. The FAA has determined that this change and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 20,000 transponder units could be affected by this AD if all were installed in aircraft of U.S. registry. Approximately 2.5 workhours will be needed to accomplish this action, at an average labor rate of $60 an hour. However, Allied Signal will provide warranty credit for up to 2.5 workhours to accomplish the action, as well as providing all necessary parts at no cost to the owners/operators of airplanes with the affected transponder units installed. Based on these figures and Allied Signal's warranty program, this AD will impose no cost impact on U.S. operators of the affected aircraft.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 a new airworthiness directive (AD) to read as follows:

98–14–03 AlliedSignal Inc.: Amendment 39–10637; Docket No. 97–CE–30–AD.

Applicability: AlliedSignal KT 76A Air Traffic Control (ATC) transponders; part number (P/N) 066–1062-00/10/02; serial numbers 93,000 through 109,999, as installed on, but not limited to the following airplanes (all serial numbers), certificated in any category:

Cessna Aircraft Company: 172, 182, R182, T182, 06, P206, U206, TP206, 210, T210, P210, 310, 310, T310, and 421 series airplanes.

Twin Commander Aircraft Company: 500, 520, 560, 680, 681, 685, 690, 695, and 720 series airplanes.

The New Piper Aircraft Corporation: PA–31, PA–32, and PA–34 series airplanes.

Raytheon Aircraft Company: E33, F33, G33, 35, J35, K35, L35, K35, M35, P35, S35, V35, 36, A26, B36, D55, E55, 56, A56, 58, 58A, 95, B95, D95, and E95 series airplanes.

Mooney Aircraft Corporation: M20 series airplanes.

McDonnell Douglas Helicopter Company: Model 500N rotorcraft.

Note 1: This AD applies to each aircraft equipped with a transponder that is identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft 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 within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent the transmission of misleading encoding altimeter information between affected aircraft caused by the inability of the affected ATC transponders to coordinate with ground-based air traffic control (ATC) radar sites and nearby Traffic Alert and Collision Avoidance System (TCAS)-equipped aircraft, accomplish the following:

(a) Replace the two resistor network modules, M401 and RM402, with new glass-coated parts in accordance with the MODIFICATION PROCEDURE section of AlliedSignal Service Bulletin SB KT 76A–7, dated July 1996. When accomplished, this replacement is referred to as Mod 7.

(b) As of the effective date of this AD, no person may install an AlliedSignal KT 76A ATC transponder; part number (P/N) 066–1062–00/10/02; serial numbers 93,000 through 109,999, in an aircraft without first incorporating Mod 7 as specified in paragraph (a) of this AD.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) The replacement required by this AD shall be done in accordance with AlliedSignal Service Bulletin SB KT 76A–7, dated July 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Inc., General Aviation Avionics, 400 N. Rogers Road, Olathe, Kansas 66062–1212. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on August 16, 1998.

Issued in Kansas City, Missouri, on June 23, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17301 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–103–AD; Amendment 39–10639; AD 98–14–05]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires modification of the ground cooling fan. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the ground cooling fan, which could result in smoke in the flight deck and cabin and consequent inability of the flight crew to perform duties or possible passenger injury due to smoke inhalation.

DATES: Effective August 5, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601

Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; 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 Dornier Model 328–100 series airplanes was published in the **Federal Register** on May 5, 1998 (63 FR 24758). That action proposed to require modification of the ground cooling fan.

Comments

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 Changes Made to this Final Rule

In the proposal, the FAA inadvertently omitted reference to the Price/Material Information Sheet, dated July 16, 1997, of Dornier Service Bulletin SB–328–21–227, dated July 16, 1997. Therefore, the FAA has revised the final rule accordingly.

Conclusion

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 50 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required actions, at average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

The cost impact figure discussed above is 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:

98–14–05 Dornier Luftfahrt GmbH: Amendment 39–10639. Docket 98–NM–103–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3095 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the ground cooling fan, which could result in smoke in the flight deck and cabin and consequent inability of the flight crew to perform duties or possible passenger injury due to smoke inhalation, accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the ground cooling fan and rotate the modified check valve, in accordance with Dornier Service Bulletin SB–328–21–227, dated July 16, 1997, including Price/Material Information Sheet, dated July 16, 1997.

Note 2: The service bulletin references EG&G Rotron Service Bulletin 011389500–21–1, dated April 30, 1997, as an additional source of service information to accomplish the actions required by this AD.

(b) As of the effective date of this AD, no person shall install on any airplane a ground cooling fan, part number 011389500, unless it has been modified in accordance with Dornier Service Bulletin SB–328–21–227, dated July 16, 1997.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(e) The modification shall be done in accordance with Dornier Service Bulletin SB–328–21–227, dated July 16, 1997, including Price/Material Information Sheet, dated July 16, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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 4: The subject of this AD is addressed in German airworthiness directive 97–243, dated August 28, 1997.

(f) This amendment becomes effective on August 5, 1998.

Issued in Renton, Washington, on June 24, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17419 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–336–AD; Amendment 39–10638; AD 98–14–04]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes, that requires modification of the lever assembly of the roll disconnect system. This amendment is prompted by mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent uncommanded disconnects of the roll control system, which could result in a limited degree of roll control and consequent reduced controllability of the airplane.

DATES: Effective August 5, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. 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 FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anthony E. Gallo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7510; fax (516) 568–2716.

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 de Havilland Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on April 27, 1998 (63 FR 20552). That action proposed to require modification of the lever assembly of the roll disconnect system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 180 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $21,600, or $120 per airplane.

The cost impact figure discussed above is 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:

98–14–04 De Havilland, Inc.: Amendment 39–10638. Docket 97–NM–336–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes on which Bombardier Modification 8/2376 was not accomplished during production; serial numbers 003 through 294 inclusive, and 296 through 433 inclusive; 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded disconnects of the roll control system, which could result in a limited degree of roll control and consequent reduced controllability of the airplane; accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the lever assembly of the roll disconnect system, in accordance with Bombardier Service Bulletin 8–27–79, Revision ''A,'' dated March 20, 1998.

(b) As of the effective date of this AD, no person shall install on the roll disconnect system of any airplane a lever assembly having part number 82710200–001.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

(e) The modification shall be done in accordance with Bombardier Service Bulletin 8–27–79, Revision 'A,' dated March 20, 1998. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.; 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 Canadian airworthiness directive CF–98–04, dated February 27, 1998.

(f) This amendment becomes effective on August 5, 1998.

Issued in Renton, Washington, on June 24, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17418 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–113–AD; Amendment 39–10640; AD 98–14–06]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes. This amendment requires repetitive inspections for discrepancies of the spring strut assembly of the forward door of the main landing gear (MLG), and replacement of the existing spring strut assembly with a new or serviceable part, if necessary. This amendment also requires eventual replacement of the existing spring strut assembly with an improved part, which, when accomplished, terminates the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the spring strut assembly of the forward door of the MLG, which, if not corrected, could result in inability to extend the MLG.

DATES: Effective August 5, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; 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 British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on May 1, 1998 (63 FR 24136). That action proposed to require repetitive inspections for discrepancies of the spring strut assembly of the forward door of the main landing gear (MLG), and replacement of the existing spring strut assembly with a new or serviceable part, if necessary. That action also proposed to require eventual replacement of the existing spring strut assembly with an improved part, which, when accomplished, would terminate the repetitive inspections.

Comments

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.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours (2 work hours per MLG) to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $2,400, or $240 per airplane, per inspection cycle.

It will take approximately 12 work hours (6 work hours per MLG) to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,200 per airplane ($1,100 per MLG). Based on this figure, the cost impact of the modification required by this AD on U.S. operators is estimated to be $29,200, or $2,920 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:

98–14–06 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10640. Docket 98–NM–113–AD.

Applicability: BAe Model ATP airplanes, as listed in British Aerospace Alert Service Bulletin ATP–32–85, Revision 1, dated March 20, 1998; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spring strut assembly of the forward door of the main landing gear (MLG), which could result in the inability to extend the MLG, accomplish the following:

(a) Within 600 flight hours after the effective date of this AD, perform a visual inspection for discrepancies of the fork end of the spring strut assembly of the forward door of the MLG, on the left and right sides of the airplane; in accordance with British Aerospace Alert Service Bulletin ATP–32–85, Revision 1, dated March 20, 1998.

(1) If no discrepancy is detected, repeat the visual inspection thereafter at intervals not to exceed 1,500 flight hours until the actions specified by paragraph (b) of this AD are accomplished.

(2) If any discrepancy is detected, prior to further flight, replace the existing spring strut assembly with a new or serviceable part, in accordance with the alert service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 1,500 flight hours until the actions specified by paragraph (b) of this AD are accomplished.

(b) Within 18 months after the effective date of this AD, replace the spring strut assembly of the forward door of the MLG with an improved spring strut assembly, on the left and right sides of the airplane; in accordance with British Aerospace Service Bulletin ATP–32–87, dated January 29, 1998. This replacement constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(e) The replacement shall be done in accordance with British Aerospace Service Bulletin ATP–32–87, dated January 29, 1998. The inspection shall be done in accordance with British Aerospace Alert Service Bulletin ATP–32–85, Revision 1, dated March 20, 1998, which contains the following effective pages:

Page No. shown on page	Revision level shown on page	Date shown on page
1–3, 6, 7, 10	1	March 20, 1998.
4, 5, 8, 9, 11	Original ..	January 26, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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.

(f) This amendment becomes effective on August 5, 1998.

Issued in Renton, Washington, on June 24, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17417 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–33–AD; Amendment 39–10636; AD 98–14–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney Canada (PWC) PW100 series turboprop engines, that requires removal of the existing fuel manifold tubes, lock plates, and preformed packing; installation of improved fuel manifold transfer tubes, improved lock plates, and improved preformed packing; and, after installation, the performance of a leak check. This amendment is prompted by reports of engine fuel leaks which resulted in either inflight engine shutdowns or fire warnings. The actions specified by this AD are intended to prevent engine fuel leaks, which can result in inflight engine shutdowns or fire warnings.

DATES: Effective August 31, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; telephone (514) 677–9411, fax (514) 647–3620. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747, fax (781) 238–7199.

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 Pratt & Whitney Canada (PWC) PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW124B, PW125B, PW126A, PW127, PW127E, PW127F series turboprop engines was published in the **Federal Register** on October 24, 1997 (62 FR 55364). That action proposed to require removal of the existing fuel manifold tubes, lock plates, and preformed packing and installation of improved fuel manifold transfer tubes, lock plates, and preformed packing, at the earliest of the following: (1) the next time, after the effective date of this AD, that the engine or module is at a maintenance base that can do the modifications specified, regardless of the scheduled maintenance action or reason for engine removal; (2) or at the next fuel nozzle change; or (3) prior to November 30, 1998. This calendar end-date was determined based upon risk assessment. After installation, but prior to further flight, this AD requires performing a leak check.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the affected part numbers (P/Ns) are not identified in the proposed rule. The FAA does not concur. The affected P/Ns have been referenced in the applicable PWC Service Bulletins (SBs).

One commenter states that the parts to be installed should not be limited to the part numbers identified in the existing SBs. The AD should make allowance for installing new parts identified in subsequent revisions. The FAA does not concur. The FAA cannot approve nonexistent parts of future designs, hence the reference of subsequent revision of SB in the AD is not permitted. However, additional parts may be introduced by an AD revision, or through alternative methods of compliance requests.

One commenter states that the requirements of PWC SB No. 21549 are not necessary and should not be required by the proposed rule. The FAA does not concur. That SB introduced improved drain tubes, that have been shown to reduce or prevent fires. Drain tube leaks have been attributed to several inflight engine fires.

One commenter states that the drain tubes should be installed in accordance with PWC SB No. 21077. The FAA concurs in part with the comment that PWC SB No. 21077 provides instructions for the part removal and replacement. However, the installation of fuel manifold drain tubes may be accomplished in accordance with PWC SB No. 21549 or PWC SB No. 21077. In addition, fuel manifold transfer tube installed in accordance with PWC No. 21077 or PWC SB No. 21516 is also acceptable. Paragraph (a) of the AD compliance section has been modified accordingly.

Since publication of the NPRM, the manufacturer has issued PWC SB No. 21077, Revision 8, dated April 4, 1998. This final rule references this latest revision.

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

The FAA estimates that 1,216 engines installed on aircraft of U.S. registry will be affected by this AD, that it will not take any additional work hours per engine to accomplish the proposed actions, as the actions may be performed during regularly scheduled maintenance or overhaul. Required parts will cost approximately $370 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $449,920.

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:

98–14–02 Pratt & Whitney Canada: Amendment 39–10636. Docket 97–ANE–33–AD.

Applicability: Pratt & Whitney Canada (PWC) PW118, W118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, W121A, PW123, PW123B, PW123C, PW123D, PW123E, PW124B, PW125B, PW126A, PW127, PW127E, PW127F series engines installed on but not limited to Dornier 328, Fokker 50, Jetstream ATP, ATR42, ATR42–500, ATR72, Embraer EMB–120, Canadair CL215T, CL415, and DeHavilland Dash-8–100/–200/–300/–315.

Note 1: This airworthiness directive (AD) applies to each engine identified in the

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

Compliance: Required as indicated, unless accomplished previously.

To prevent engine fuel leaks, which can result in inflight engine shutdowns or fire warnings, accomplish the following:

(a) Remove the existing fuel manifold transfer tubes, transfer tube lock plates, and fuel manifold drain tubes in accordance with PWC Service Bulletin (SB) No. 21077, Revision 8, dated April 4, 1998. Remove the existing preformed packing in accordance with PWC SB No. 21364, Revision 1, dated April 28, 1995. Replace with fuel manifold transfer tubes in accordance with the following applicable PWC Service Bulletins (SBs): No. 21077, Revision 8, dated April 4, 1998, or No. 21516, dated August 14, 1997. Replace fuel manifold drain tubes in accordance with PWC SB No. 21549, dated September 18, 1997 or SB No. 21077, Revision 8, dated April 4, 1998. The modification must include installation of the improved lock plates in accordance with PWC SB No. 21373, Revision 3, dated October 11, 1996, and the preformed packing in accordance with PWC SB No. 21364, Revision 1, dated April 28, 1995, as follows, whichever occurs first following the effective date of this AD:

(1) At the next engine removal, regardless of cause; or

(2) At the next fuel nozzle change; or

(3) Prior to November 30, 1998.

(b) After the installation of the improved fuel manifold tubes and lockplates, but prior to further flight, perform a leak check in accordance with the applicable maintenance manual.

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

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

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

(e) The actions required by this AD shall be done in accordance with the following PWC SBs:

Document No	Pages	Revision	Date
21077	1–9	8	April 4, 1998.
Total Pages: 9			
21516	1–5	Original	August 14, 1997.
Total Pages: 5.			
21549	1–4	Original	September 18, 1997.
Total Pages: 4.			
21373	1–11	3	October 11, 1996.
Total Pages: 11.			
21364	1–8	1	April 28, 1995.
Total Pages: 8.			

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; telephone (514) 677–9411, fax (514) 647–3620. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 31, 1998.

Issued in Burlington, Massachusetts, on June 23, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–17415 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–96–AD; Amendment 39–10641; AD 98–14–07]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 172R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company Model 172R airplanes. This AD requires modifying the lower forward doorpost bulkhead by installing rivets. This AD is the result of a report from the manufacturer that these rivets were erroneously omitted during manufacture of some of the new production airplanes. The actions specified by this AD are intended to prevent reduced structural rigidity at the forward doorpost bulkhead, which could result in structural cracking and possible loss of control of the airplane.

DATES: Effective August 16, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from The Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277, telephone: (316) 941–7550, facsimile: (316) 942–9008. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–96–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eual Conditt, Senior Aerospace

Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, RM 100, Mid-Continent Airport, Wichita, Kansas, 67209, telephone: (316) 946–4128; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Model 172R airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 13, 1998 (63 FR 7322). The NPRM proposed to require modifying the lower forward doorpost bulkhead on both sides of the affected model airplanes by installing rivets. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Cessna Service Bulletin No. SB97–53–02, dated September 15, 1997.

The NPRM was the result of a report from the manufacturer that these rivets were erroneously omitted during manufacture of some of the new production airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 87 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 14 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $150 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $86,130, or $990 per airplane. The FAA assumes that none of the owners/operators of the affected airplanes have accomplished this action.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **''ADDRESSES''**.

LIST OF SUBJECTS IN 14 CFR PART 39

Air transportation, Aircraft, Aviation safety, 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 a new airworthiness directive (AD) to read as follows:

98–14–07 Cessna Aircraft Company: Amendment 39–10641; Docket No. 97–CE–96–AD.

Applicability: Model 172R airplanes with the following serial numbers, certificated in any category: 17280004 through 17280016, 17280018 through 17280050, 17280052 through 17280058, 17280060 through 17280062, 17280064, 17280066 through 17280082, 17280085 through 17280099, 17280101 through 17280113, 17280115, 17280116, 17280118 through 17280125, 17280128 through 17280131, and 17280138.

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

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent reduced structural rigidity at the lower forward doorpost bulkhead, which could result in structural cracking and possible loss of control of the airplane, accomplish the following:

(a) Modify the lower forward doorpost of the affected airplanes by installing the specified rivets in accordance with Cessna Service Bulletin No. SB97–53–02, dated September 15, 1997.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The modification required by this AD shall be done in accordance with Cessna Service Bulletin No. SB97–53–02, dated September 15, 1997. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on August 16, 1998.

Issued in Kansas City, Missouri, on June 24, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17414 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 162 and 178

[T.D. 98–49]

RIN 1515–AB98

Prior Disclosure; Correction

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: Customs published in the **Federal Register** on May 28, 1998, a document revising the Customs Regulations regarding ''prior disclosure''. This document contains corrections to that document.

EFFECTIVE DATE: June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch (202) 927–2344.

SUPPLEMENTARY INFORMATION:

Background

Customs published in the **Federal Register** (63 FR 29126) on May 28, 1998, a document revising the Customs Regulations regarding ''prior disclosure''. That document contained three technical errors which this document will correct.

Correction of Publication

Accordingly, the publication on May 28, 1998, of the final rule (T.D. 98–49) (63 FR 29126) (FR Doc. 98–14154) is corrected as follows:

1. On page 29132, in the first column, paragraph (a)(1) of § 162.74 is corrected to remove the word ''duties'' and insert in its place the words ''duties, taxes and fees''.

2. On page 29132, in the second column, paragraph (c) of § 162.74 is corrected by removing the words ''actual loss of duties'' in the heading and wherever it appears in the text and inserting in their place the words ''actual loss of duties, taxes and fees''. Also, paragraph (c) is corrected by removing the words ''actual duty loss'' or ''actual loss of duty'' and inserting in their place the words ''actual loss of duties, taxes or fees''.

3. On page 29132, in the third column, paragraph (f) of § 162.74 is corrected by inserting a comma after the word ''Fines'' the second time the word appears in the paragraph.

Dated: June 25, 1998

Joseph W. Clark,

Chief, Regulations Branch Harold M. Singer

[FR Doc. 98–17431 Filed 6–30–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 97F–0305]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of siloxanes and silicones; cetylmethyl, dimethyl, methyl 11-methoxy-11-oxoundecyl as a pigment dispersant in all pigmented polymers intended for use in contact with food. This action is in response to a petition filed by Goldschmidt Chemical Corp.

DATES: The regulation is effective July 1, 1998; written objections and requests for a hearing by July 31, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 31, 1997 (62 FR 41053), FDA announced that a food additive petition (FAP 7B4550) had been filed by Goldschmidt Chemical Corp., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.3725 *Pigment dispersants* (21 CFR 178.3725) to provide for the expanded safe use of siloxanes and silicones; cetylmethyl, dimethyl, methyl 11-methoxy-11-oxoundecyl as a pigment dispersant in all pigmented polymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 178.3725 should be amended as set forth below.

Information in the petition indicates that one of the constituents of the additive, i.e., hexadecene which is a starting material for the additive, leads to the formation in rabbits of a transient metabolite, 1,2-epoxyhexadecane (EHD). In a published study, EHD was reported to be a weak skin carcinogen in female Swiss mice (Ref. 1). FDA evaluated this study (Ref. 2) and has concluded that the evidence that EHD may be a weak dermal carcinogen in female Swiss mice does not preclude a conclusion that the petitioned use of the substance is safe[1].

First, the incidence of dermal tumors in EHD-treated mice was small (2 or 3 of 40 mice) and not statistically significant, assuming that control animals had no dermal tumors. Second, there were deficiencies in the conduct and reporting of this study. Third, dermal carcinogenicity is not highly predictive of carcinogenicity by other routes of exposure (Ref. 3). These observations support the agency's view that there is no evidence that suggests that EHD is likely to be a carcinogen when orally ingested, which is the route of exposure most directly relevant to the safety assessment of food additives.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.31(i) 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.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before July 31, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be

[1] As noted, EHD is reported to be a weak skin carcinogen in female Swiss mice. This finding does not mean that EHD is a carcinogenic impurity of the additive.

If EHD were a carcinogenic impurity, FDA would evaluate such impurity under the general safety clause, using risk assessment procedures to determine whether there is a reasonable certainty of no harm that would result from the proposed use of the additive, *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984).

separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Van Duuren, B. L., L. Langseth, B. M. Goldschmidt, and L. Orris, ''Carcinogenicity of Epoxides, Lactones, and Epoxy Compounds. VI. Structure and Carcinogenic Activity,'' *Journal of the National Cancer Institute*, vol. 39, No. 6., pp. 1217–1228, 1967.

2. Memorandum from Executive Secretary of the Cancer Assessment Committee, FDA, to Quantitative Risk Assessment Committee, FDA, concerning ''Potential Carcinogenicity of 1,2-epoxyhexadecane (EHD): Subject of Food Additive Petition No. 7B4550 (Goldschmidt Chemical Corp.),'' dated January 8, 1998.

3. Tobin, Paul S. et al., ''An Evaluation of Skin Painting Studies as Determinants of Tumorigenesis Potential Following Skin Contact with Carcinogens,'' *Regulatory Toxicology and Pharmacology*, vol. 2, 22–37, 1982.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3725 is amended in the table by alphabetically adding an entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.3725 Pigment dispersants.

* * * * *

Substances	Limitations
* * *	* * * *
Siloxanes and silicones; cetylmethyl, dimethyl, methyl 11-methoxy-11-oxoundecyl (CAS Reg. No. 155419–59–3).	For use only at levels not to exceed 0.5 percent by weight of the pigment. The pigmented polymers may contact all foods under conditions of use C, D, E, F, and G described in Table 2 of § 176.170(c) of this chapter.

Dated: June 19, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–17412 Filed 6–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 48, 145, and 602

[T.D. 8774]

RIN 1545–AW15

Kerosene Tax; Aviation Fuel Tax; Tax on Heavy Trucks and Trailers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the kerosene and aviation fuel excise taxes and the tax on the first retail sale of certain tractors and truck, trailer, and semitrailer chassis and bodies (heavy vehicles). The regulations provide rules for the kerosene tax, the refund available to certain aviation producers, and the tax on heavy vehicles. The regulations relating to kerosene affect the tax liability of certain industrial users, refiners, terminal operators, throughputters, and persons that sell, buy, or use kerosene. The regulations relating to aviation fuel affect certain producers, retailers, and users of aviation fuel. The regulations relating to the tax on heavy vehicles affect vehicle manufacturers and dealers. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective July 1, 1998. For dates of applicability, see §§ 48.4082–6T, 48.4082–7T(b), 48.4082–8T(f), 48.4082–9T(b), 48.4091–3T(f), 48.4101–3T(e), 48.6427–10T(c), 48.6427–11T(g), and 145.4052–1(a)(2)(ii).

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1608. Responses to this collection of information are required to obtain a tax benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to excise tax regulations (26 CFR parts 48 and 145) that implement certain changes made by the Taxpayer Relief Act of 1997 (the 1997 Act) relating to taxes on kerosene, aviation fuel, and heavy vehicles.

Kerosene; the 1997 Act

Section 4081 imposes a tax on certain removals, entries, and sales of taxable fuel. Before July 1, 1998, taxable fuel means gasoline and diesel fuel. As of that date, however, the definition of taxable fuel is expanded by the 1997 Act to include kerosene. Thus, after June 30, 1998, tax is imposed on the removal of kerosene from a terminal at the terminal rack.

In addition, the 1997 Act extends the rules for the exemption of dyed diesel fuel to dyed kerosene. Thus, tax is not imposed on kerosene that (1) the IRS determines is destined for a nontaxable use (such as for heating), (2) is indelibly dyed in accordance with IRS regulations, and (3) meets any marking requirements that may be prescribed in regulations.

Also, the 1997 Act provides that undyed kerosene that is destined for a nontaxable use may be removed, entered, or sold tax free in three situations. First, in the case of aviation-grade kerosene, dyeing is not required if the kerosene is received by a person that is registered by the IRS for purposes of the aviation fuel tax imposed by section 4091. Second, dyeing is not required for feedstock kerosene that is received from a pipeline or vessel by a registered kerosene feedstock user. Kerosene used as a feedstock by other persons is exempt from the dyeing requirement to the extent provided by regulations. Finally, to the extent prescribed by regulations, dyeing is not required if kerosene is received by a registered wholesale distributor that sells kerosene exclusively to ultimate vendors that sell kerosene from a pump that is not suitable for use in fueling any diesel-powered highway vehicle or train (a blocked pump).

The 1997 Act adds section 4101(e) to provide that a terminal for kerosene or diesel fuel cannot be an approved terminal unless the operator of the terminal offers dyed diesel fuel and dyed kerosene for removal for nontaxable use. This provision is not applicable until July 1, 2000.

The 1997 Act generally applies to kerosene the credit and refund rules that apply to diesel fuel. Thus, a credit or refund is allowable to a registered ultimate vendor that sells taxed, undyed kerosene for use on a farm for farming purposes or for the exclusive use of a state or local government. In addition, a credit or refund is allowable to a registered ultimate vendor that sells taxed, undyed kerosene from a blocked pump or, to the extent provided by the Secretary of the Treasury, for blending with heating oil to be used during periods of extreme or unseasonable cold.

Kerosene; Explanation of Provisions

Because kerosene is classified as a taxable fuel as of July 1, 1998, the rules (including definitions) in the existing regulations that apply to taxable fuel generally apply to kerosene.

The temporary regulations define kerosene as the kerosene described in ASTM Specification D 3699 (No. 1–K and No. 2–K) and ASTM Specification D 1655 (kerosene-type jet fuel).

Under the temporary regulations, tax is not imposed on the removal, entry, or sale of kerosene that is dyed with dye of the same strength and composition that is now required for diesel fuel. Also, every retail pump where dyed kerosene is sold must display a prescribed notice similar to the one now required on dyed diesel fuel pumps.

Under the temporary regulations, tax generally is not imposed on aviation-grade kerosene if the person that receives the kerosene in a transaction otherwise subject to tax (such as a person that buys kerosene at a terminal rack) is registered with respect to the section 4091 tax and, for sales after September 30, 1998, certifies that the kerosene will be used as a fuel in an aircraft. These buyers include registered aviation fuel producers (that is, persons with IRS registration numbers with an ''H'' suffix) and registered commercial airlines.

Transitional rules provide that tax generally is not imposed on aviation-grade kerosene that is destined for use as aviation fuel if an unregistered person (such as a fixed-base operator) receives the kerosene at a terminal rack and certifies (for sales after September 30, 1998) that the kerosene will be used as a fuel in an aircraft. The Treasury Department is considering whether this provision should be made a part of the final regulations, or whether persons that are presently unregistered should be required to register in order to receive aviation-grade kerosene tax free and requests comments on this issue. Comments may be submitted in the manner described under the **ADDRESSES** caption in the notice of proposed rulemaking on these subjects in the Proposed Rules section of this issue of the **Federal Register**.

The temporary regulations describe the conditions under which a registered ultimate vendor may be eligible for a credit or refund with respect to taxed kerosene that it sells from a blocked pump. A blocked pump is defined as a fuel pump that is at a fixed location and that cannot be used to fuel any diesel-powered highway vehicle or train. Also, blocked pumps must display a prescribed notice.

The temporary regulations do not provide rules for the following: (1) the exception from the dyeing requirement for kerosene that is removed from a terminal for use as a feedstock, (2) the exception from the dyeing requirement for kerosene that is received by a registered wholesale distributor that sells kerosene exclusively to ultimate vendors that sell kerosene from a blocked pump, (3) the availability of a credit or refund to a registered ultimate vendor that sells kerosene for blending with heating oil to be used during periods of extreme or unseasonable cold, and (4) the requirement that a terminal for kerosene or diesel fuel cannot be an approved terminal unless the operator of the terminal offers dyed diesel fuel and dyed kerosene for removal for nontaxable use. Comments are also requested on these issues. Comments may be submitted in the manner described under the **ADDRESSES** caption in the notice of proposed rulemaking on these subjects in the Proposed Rules section of this issue of the **Federal Register**.

Aviation Fuel

The 1997 Act added section 4091(d), which allows a registered aviation fuel producer (including a registered wholesale distributor) to obtain a refund of tax previously paid on aviation fuel that it buys. The temporary regulations describe the procedures to be followed for the allowance of this refund. These procedures are similar to the procedures under section 4081(e) for refunds relating to taxable fuel on which two taxes have been paid.

Registration of Heavy Vehicle Manufacturers and Retailers

The tax on the sale of heavy vehicles imposed by section 4051 is a tax that applies to the first retail sale by the manufacturer, importer, or retailer of a vehicle. The tax is not imposed if a

vehicle is sold for resale or for lease on a long-term basis. Under existing regulations, this tax-free treatment applies only if both the seller and the buyer are registered by the IRS. Under the 1997 Act, however, the Treasury Department is to revise those regulations so that those sales may be made tax free even if the parties have not been registered by the IRS.

These temporary regulations generally provide that a person, such as a vehicle manufacturer, may sell a vehicle tax free if it accepts from its buyer, such as a vehicle retailer, a prescribed statement, signed under penalties of perjury, stating that the buyer will resell the vehicle or lease it on a long-term basis. Neither party will be required to be registered.

The temporary regulations do not affect the registration requirements for tax-free sales under section 4221, such as sales for the exclusive use of a state or local government.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare and submit the exemption certificates described in these regulations (many of which are similar to certificates that are already in use) is minimal and will not have a significant impact on those small entities that choose to provide the certificates. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 48 and 145

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 48, 145, and 602 are amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAX REGULATIONS

Paragraph 1. The authority citation for part 48 is amended by adding entries in numerical order to read in part as follows:

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

Sections 48.4082–6T, 48.4082–7T, and 48.4082–8T also issued under 26 U.S.C. 4082 * * *

Section 48.4101–3 also issued under 26 U.S.C. 4101(a) * * *

Sections 48.6427–10T and 48.6427–11T also issued under 26 U.S.C. 6427(n) * * *

Par. 2. Section 48.4081–1T is added to read as follows:

§ 48.4081–1T Taxable fuel; definitions (temporary).

(a) [Reserved]

(b) *Definitions.*

Kerosene means, after June 30, 1998,—

(1) The two grades of kerosene (No. 1–K and No. 2–K) described in ASTM Specification D 3699; and

(2) Kerosene-type jet fuel described in ASTM Specification D 1655 and military specifications MIL–T–5624R and MIL–T–83133D (Grades JP–5 and JP–8). For availability of ASTM and military specification material, see § 48.4081–1(c)(2)(i).

Par. 3. Sections 48.4082–6T, 48.4082–7T, 48.4082–8T, 48.4082–9T, and 48.4082–10T are added to read as follows:

§ 48.4082–6T Kerosene; treatment as diesel fuel in certain cases (temporary).

For purposes of §§ 48.4081–1(b) (the definition of taxable fuel), 48.4081–2(c), 48.4082–1, 48.4082–4, and 48.4082–5, after June 30, 1998, diesel fuel includes kerosene.

§ 48.4082–7T Kerosene; notice required with respect to dyed kerosene (temporary).

(a) *In general.* A legible and conspicuous notice stating: ''*DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE*'' must be posted by a seller on any retail pump or other delivery facility where it sells dyed kerosene for use by its buyer. Any seller that fails to post the required notice on any retail pump or other delivery facility where it sells dyed kerosene is, for purposes of the penalty imposed by section 6715, presumed to know that the fuel will not be used for a nontaxable use.

(b) *Effective date.* This section is applicable after June 30, 1998.

§ 48.4082–8T Kerosene; exemption for aviation-grade kerosene (temporary).

(a) *Overview.* This section provides rules for exempting aviation-grade kerosene from the tax imposed by section 4081. Generally, under prescribed conditions, tax is not imposed on a removal, entry, or sale of aviation-grade kerosene if the kerosene is destined for use as a fuel in an aircraft.

(b) *Definition.*

Aviation-grade kerosene means kerosene-type jet fuel described in ASTM Specification D 1655 and military specifications MIL–T–5624R and MIL–T–83133D (Grades JP–5 and JP–8). For availability of ASTM and military specification material, see § 48.4081–1(c)(2)(i).

(c) *Removals and entries not in connection with sales.* Tax is not imposed by section 4081 on the removal or entry not in connection with a sale of aviation-grade kerosene if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The kerosene will be used as fuel in an aircraft and—

(i) The person otherwise liable for tax subsequently delivers the kerosene into the fuel supply tank of an aircraft or is registered under section 4101 with respect to the tax imposed by section 4091; or

(ii) The section 4091 tax has been imposed on the kerosene.

(d) *Removals and entries in connection with sales.* Tax is not imposed under section 4081 on the removal or entry of aviation-grade kerosene in connection with a sale if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The kerosene will be used as fuel in an aircraft and—

(i) The buyer is registered under section 4101 with respect to the tax imposed by section 4091;

(ii) The buyer is buying for its use in a nontaxable use (as defined in section 4092(a)); or

(iii) The section 4091 tax is, or has been, imposed on the kerosene.

(e) *Evidence under paragraph (d)(3)*—(1) *In general*—(i) *Sales before October 1, 1998.* For sales before October 1, 1998, the requirements of paragraph (d)(3) of this section will be considered to have been met if the person otherwise liable for tax has an unexpired certificate (described in this paragraph (e)) from the buyer and has no reason to believe that any information in the certificate is false.

(ii) *Sales after September 30, 1998.* For sales after September 30, 1998, the requirements of paragraph (d)(3) of this section are met only if the person otherwise liable for tax has an unexpired certificate (described in this paragraph (e)) from the buyer and has no reason to believe that any information in the certificate is false.

(2) *Certificate.* The certificate to be provided by a buyer of aviation-grade kerosene is a statement signed under penalties of perjury by a person with authority to bind the buyer, in substantially the same form as the model certificate provided in paragraph (e)(4) of this section, and that contains all information necessary to complete the model certificate. A new certificate or notice that the correct certificate is invalid must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date the buyer provides a new certificate or notice that the current certificate is invalid to the seller.

(iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's right to provide a certificate has been withdrawn.

(3) *Withdrawal of the right to provide a certificate.* The Internal Revenue Service may withdraw the right of a buyer of aviation-grade kerosene to provide a certificate under this section if the buyer uses or disposes of aviation-grade kerosene to which a certificate applies other than as a fuel in an aircraft. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(4) *Model certificate.*

Certificate of Person Buying Aviation-Grade Kerosene for Use as a Fuel in an Aircraft

(To support tax-free removals and entries of aviation-grade kerosene under section 4081 of the Internal Revenue Code.)

Name, address, and employer identification number of seller (''Buyer'') certifies the following under penalties of perjury:

Name of Buyer: _____

The aviation-grade kerosene to which this certificate relates will be used as fuel in an aircraft.

Buyer is (check one):

_____ Registered under section 4101 of the Internal Revenue Code with respect to the tax imposed by section 4091 with a registration number of _____.

_____ Buying the kerosene for its use in a nontaxable use (as defined in section 4092(a)).

_____ Buying the kerosene for its use (other than a nontaxable use) in commercial aviation (as defined in section 4092(b)).

_____ Buying the kerosene for its use (other than a nontaxable use) in noncommercial aviation (as defined in section 4041(c)(2)).

_____ Buying the kerosene for resale.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Invoice or delivery ticket number _____.

2. _____ (number of gallons).

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____

2. Expiration date _____ (period not to exceed 1 year after the effective date)

3. Buyer account or order number _____.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

Buyer understands that if Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

(f) *Effective date.* This section is applicable after June 30, 1998.

§ 48.4082–9T Kerosene; exemption for non-fuel feedstock purposes (temporary).

(a) *In general.* Tax is not imposed under section 4081 and § 48.4081–3(e)(1) if, upon the removal of kerosene from a pipeline or vessel, the kerosene is received by a taxable fuel registrant that is a kerosene feedstock user. For this purpose, a *kerosene feedstock user* is a person that receives kerosene by bulk transfer for its own use in the manufacture or production of any substance (other than gasoline, diesel fuel, or special fuels referred to in section 4041).

(b) *Effective date.* This section is applicable after June 30, 1998.

§ 48.4082–10T Kerosene; additional exemption from floor stocks tax (temporary).

The floor stocks tax imposed by section 1032(g) of the Taxpayer Relief Act of 1997 does not apply to kerosene that satisfies the dyeing requirements of § 48.4082–1(b) by the earlier of—

(a) September 30, 1998; or

(b) The time the kerosene is sold by the person otherwise liable for the floor stocks tax.

Par. 4. Section 48.4091–3T is added to read as follows:

§ 48.4091–3T Aviation fuel; conditions to allowance of refunds of aviation fuel tax under section 4091(d) (temporary).

(a) *Overview.* This section provides the conditions under which a refund of tax imposed by section 4091 is allowable with respect to taxed aviation fuel that is held by a registered aviation fuel producer. No credit against any tax imposed by the Internal Revenue Code is allowed under section 4091(d).

(b) *Conditions to allowance of refund.* A claim for refund of tax imposed by section 4091 with respect to aviation fuel is allowed under section 4091(d) and this section only if—

(1) A tax imposed by section 4091 with respect to the aviation fuel was paid to the government by an importer or producer (the first producer) and the tax has not been otherwise credited or refunded;

(2) After imposition of the tax, the aviation fuel is acquired by a person that is a registered aviation fuel producer (the second producer);

(3) The second producer has filed a timely claim for refund that contains the information required under paragraph (d) of this section; and

(4) The first producer and any person that owns the fuel after its sale by the first producer and before its purchase by the second producer (a subsequent seller) have met the reporting requirements of paragraph (c) of this section.

(c) *Reporting requirements*—(1) *In general.* The reporting requirements of this paragraph (c)(1) are met if the first producer files a report (the first producer's report) that—

(i) Is in substantially the same form as the model report provided in paragraph (c)(2) of this section (or such other model report as the Commissioner may prescribe);

(ii) Contains all information necessary to complete such model report; and

(iii) Is filed at the time and in the manner prescribed by the Commissioner.

(2) *Model first producer's report.*

First Producer's Report

_____

First Producer's name, address, and employer identification number

_____

Buyer's name, address, and employer identification number

_____

Date and location of taxable sale

_____

Volume and type of aviation fuel sold

_____

Amount of federal excise tax paid on account of the sale

Under penalties of perjury, First Producer declares that First Producer has examined this statement, including any accompanying schedules and statements, and, to the best of First Producer's knowledge and belief, it is true, correct and complete.

_____

Printed or typed name of the person signing

_____

Title of person signing

_____

Signature and date signed

(3) *Information provided to buyers.* The reporting requirements of this paragraph (c)(3) are met if a first producer that filed a first producer's report under paragraph (c)(1) of this section gives a copy of the report to the person to whom the first producer sells the aviation fuel.

(4) *Statement of subsequent seller*—(i) *In general.* The reporting requirements of this paragraph (c)(4) are met if—

(ii)(A) Each subsequent seller gives to its buyer a copy of a statement that provides all information (whether or not in the same format) necessary to complete the model statement prescribed in paragraph (c)(4)(ii) of this section (or such other model statement as the Commissioner may prescribe); and

(B) The statement is provided at the bottom or on the back of the copy of the first producer's report (or in an attached document).

(iii) *Model statement describing subsequent sale.*

Statement of Subsequent Seller (Aviation Fuel)

_____

Name, address, and employer identification number of seller in subsequent sale

_____

Name, address, and employer identification number of buyer in subsequent sale

_____

Date and location of subsequent sale

_____

Volume and type of aviation fuel sold

The undersigned seller (the Seller) has received the copy of the first producer's report provided with this statement in connection with Seller's purchase of the aviation fuel described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, it is true, correct and complete.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Signature and date signed

(5) *Sale to multiple buyers.* If a first producer's report relates to aviation fuel that is divided among more than one buyer, multiple copies of the first producer's report should be made at the stage that the aviation fuel is divided and a copy given to each buyer. The reporting requirements of this paragraph (c) will be met only with respect to the fuel purchased by buyers that are given a copy of the report including any statement required under paragraph (c)(4) of this section.

(d) *Form and content of claim*—(1) *In general.* The following rules apply to claims for refund under section 4091(d):

(i) The claim must be made by the second producer and must include all the information described in paragraph (d)(2) of this section.

(ii) The claim must be made on Form 8849 (or such other form as the Commissioner may designate) in accordance with the instructions on the form. The form should be marked *Section 4091(d) Claim* at the top. Section 4091(d) claims must not be included with a claim for a refund under any other provision of the Internal Revenue Code.

(2) *Information to be included in the claim.* Each claim for a refund under section 4091(d) must contain the following information with respect to the aviation fuel covered by the claim:

(i) Volume and type of aviation fuel.

(ii) Date on which the second producer acquired the aviation fuel to which the claim relates.

(iii) Amount of tax that the first producer paid to the government and a statement that the second producer has not included the amount of that tax in the sales price of the aviation fuel to which the claim relates and has not collected that amount from the person that bought the aviation fuel from the second producer, if any.

(iv) Name, address, and employer identification number of the first producer that paid the tax to the government.

(v) A copy of the first producer's report that relates to the aviation fuel covered by the claim.

(vi) A copy of any statement of a subsequent seller that the second producer received with respect to that aviation fuel.

(e) *Time for filing claim.* A claim for refund under section 4091(d) may be filed any time after the first producer has filed the return of the tax to which the claim relates and before the end of the period prescribed by section 6511 for the filing of a claim for refund of that tax.

(f) *Effective date.* This section is applicable with respect to refunds of tax imposed by section 4091 after December 31, 1998.

Par. 5. Section 48.4101–2T is added to read as follows:

§ 48.4101–2T Information reporting (temporary).

(a)(1) through (a)(3) [Reserved]

(a)(4) *Registered aviation fuel producers.* After June 30, 1999, each person that is registered under section 4101 as a producer of aviation fuel must make a return showing—

(i) The name and employer identification number of each unregistered person to whom it sold aviation fuel for resale;

(ii) The volume of the aviation fuel sold to such persons;

(iii) The date and location of such sales; and

(iv) Any other information required by the Commissioner.

(b) through (d) [Reserved]

Par. 6. Section 48.4101–3T is added to read as follows:

§ 48.4101–3T Registration; special rules for kerosene (temporary).

(a) *Application of § 48.4101–1.* The references to diesel fuel in §§ 48.4101–1(a)(1) and (f)(1)(ii) are treated as references to either diesel fuel or kerosene, and the references in §§ 48.4101–1(b)(5)(i) and (f)(2) to paragraphs (c)(1) or (d) of § 48.4101–1 are treated as references also to paragraph (c) of this section.

(b) *Transitional registration rule*—(1) *In general.* A person is treated as a taxable fuel registrant if, on June 30, 1998, the person—

(i) Is an enterer, refiner, terminal operator, or throughputter of kerosene and is registered under section 4101 as a producer or importer of aviation fuel; or

(ii) Operates one or more terminals that store kerosene (and no other type of taxable fuel) and each position holder at each of its terminals is a taxable fuel registrant.

(2) *Termination.* A person treated as registered under this paragraph (b) is treated as registered until the earlier of—

(i) The effective date of a registration issued under § 48.4101–1(g)(3) with respect to kerosene;

(ii) The effective date of a revocation or suspension of registration under § 48.4101–1(i); or

(iii) April 1, 1999.

(c) *Persons that may, but are not required to, be registered.* A person may, but is not required to, be registered under section 4101 with respect to the tax imposed by section 4081 if the person is a kerosene feedstock user (defined in § 48.4082–9T).

(d) *Additional terms and conditions of registration for certain terminal operators.* A legible and conspicuous notice stating: *''DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE''* must be provided by each terminal operator to any person that receives dyed kerosene at a terminal rack of that operator. This notice must be provided by the time of the removal and must appear on all shipping papers, bills of lading, and similar documents that are provided by the terminal operator to accompany the removal of the fuel.

(e) *Effective date.* This section is applicable after June 30, 1998.

Par. 7. Sections 48.6427–10T and 48.6427–11T are added to read as follows:

§ 48.6427–10T Claims with respect to kerosene (temporary).

(a) *Claims under § 48.6427–8*—(1) *In general.* For purposes of § 48.6427–8, *diesel fuel* includes *kerosene.*

(2) *Blocked pumps.* Kerosene is treated as satisfying the conditions of § 48.6427–8(b)(1) only if it was not sold from a blocked pump (as described in § 48.6427–11T(b)).

(b) *Claims under § 48.6427–9.* For purposes of § 48.6427–9, *diesel fuel* includes *kerosene.*

(c) *Effective date.* This section is applicable to kerosene taxed after June 30, 1998.

§ 48.6427–11T Special rules for claims by registered ultimate vendors of kerosene (blocked pump) (temporary).

(a) *Overview.* This section provides rules relating to claims by registered ultimate vendors for payments and income tax credits with respect to kerosene that is sold from a blocked pump. For rules relating to claims by registered ultimate vendors for kerosene that is sold for farming use or use by a State, see §§ 48.6427–9 and 48.6427–10T.

(b) *Definition; blocked pump.* A *blocked pump* is a fuel pump that meets the following conditions:

(1) It is used to dispense undyed kerosene that is sold at retail for use by the buyer in a nontaxable use.

(2) It is at a fixed location and cannot (because, for example, of its distance from a road surface or train track or the length of its delivery hose) be used to dispense fuel directly into the fuel supply tank of a diesel-powered highway vehicle or train.

(3) It is identified with a legible and conspicuous notice stating: *''UNDYED UNTAXED KEROSENE, NONTAXABLE USE ONLY''.*

(c) *Conditions to allowance of credit or payment.* Notwithstanding § 48.6427–9(c), a claim for a credit or payment with respect to undyed kerosene is allowable under section 6427(l)(5)(B)(i) if—

(1) Tax was imposed by section 4081 on the kerosene to which the claim relates;

(2) The claimant sold the kerosene from a blocked pump;

(3) The claimant is a registered ultimate vendor of kerosene; and

(4) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph

(e) of this section.

(d) *Form of claim.* The rules of § 48.6427–9(d) apply to claims filed under this section.

(e) *Content of claim.* Each claim for credit or payment under this section must contain the following information with respect to all the kerosene covered by the claim:

(1) The total number of gallons covered by the claim.

(2) A statement by the claimant that tax has been imposed on the kerosene covered by the claim.

(3) The claimant's registration number.

(4) A statement that the claimant has not included the amount of the tax in its sales price of the kerosene and has not collected the amount of tax from its buyer.

(f) *Time and place for filing claim.* The rules of § 48.6427-9(f) apply to claims filed under this section.

(g) *Effective date.* This section is applicable June 30, 1998.

PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1982 (PUB. L. 97–424)

Par. 8. The authority citation for part 145 continues to read in part as follows:

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

Par. 9. Section 145.4052–1 is amended as follows:

1. Paragraph (a)(2)(ii) is redesignated as paragraph (a)(2)(ii)(A).

2. Paragraph (a)(2)(ii)(A), as redesignated, is amended by removing the language ''Both'' and adding ''For a sale before July 1, 1998, both'' in its place and removing the language ''or'' at the end.

3. Paragraph (a)(2)(ii)(B) is added to read as follows:

§ 145.4052–1 Special rules and definitions.

(a) * * *

(2) * * *

(ii) * * *

(B) For a sale after June 30, 1998, and regardless of the registration status of the seller or the purchaser, the seller has in good faith accepted from the purchaser a statement that the purchaser executed in good faith and that is in substantially the same form as the certificate described in paragraph (a)(6) of this section, except that the statement must be signed under penalties of perjury and need not contain a registration number, or

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In § 602.101, paragraph (c) is amended by:

1. Removing the following entry from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
145.4052–1	1545–0120 1545–0745 1545–1076

CFR part or section where identified and described	Current OMB control number
* * * * *	

2. Adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
48.4082–7T	1545–1608
48.4082–8T	1545–1608
48.4091–3T	1545–1608
* * * * *	
48.4101–2T	1545–1608
48.4101–3T	1545–1608
* * * * *	
48.6427–11T	1545–1608
* * * * *	
145.4052–1	1545–1608 1545–0120 1545–0745 1545–1076
* * * * *	

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: June 17, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–17400 Filed 6–26–98; 2:02pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–065–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Alabama regulatory program (hereinafter referred to as the ''Alabama program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama's revisions to and additions of statutes pertain to the small operator assistance program (SOAP), the repair of homes and other structures materially damaged by underground coal mining, and the replacement of affected water supplies. The amendments is intended to revise the Alabama program to be consistent with SMCRA.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 901.15 and 901.16.

II. Submission of the Proposed Amendment

By letter dated April 14, 1998 (Administrative Record No. AL–0579), Alabama submitted an amendment to its program pursuant to SMCRA. Alabama submitted the amendment in response to a May 20, 1996, letter (Administrative Record No. AL–0555) that OSM sent to Alabama in accordance with 30 CFR 732.17(c). OSM announced receipt of the amendment in the April 29, 1998, **Federal Register** (63 FR 23403), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on May 29, 1998. Because no one requested a public hearing or meeting, none was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Section 9–16–83. Permits; Fee

1. Alabama proposed to revise paragraph (c) to read as follows:

(c)(1) If the regulatory authority finds that the probable total annual production at all locations of any surface coal mining operator will not exceed 300,000 tons, the cost of the following activities, which shall be performed by a qualified public or private laboratory or such other public or private qualified entity designated by the regulatory authority, shall be assumed by the regulatory authority upon the written request of the operator in connection with a permit application, provided that funds are made available to the regulatory authority for such purposes by the Secretary of the U.S. Department of Interior.

(A) The determination of probable hydrologic consequences required by subsection (b)(10), including the engineering analyses and designs necessary for the determination.

(B) The development of cross-section maps and plans required by subsection (b)(13).

(C) The geologic drilling and statement of results of test borings and core samplings required by subsection (b)(14).

(D) The collection of archaeological information required by subsection (b)(12) and any other archaeological and historical information required by the regulatory authority, and the preparation of plans necessitated thereby.

(E) Pre-blast surveys required by subsection 9–16–90(b)(15)e.

(F) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the regulatory authority under this Act.

(2) The regulatory authority shall provide or assume the cost of training coal operators that meet the qualifications stated in paragraph (1) concerning the preparation of permit applications and compliance with the regulatory program, and shall ensure that qualified coal operators are aware of the assistance available under this subsection; provided that funds for such purposes are made available to the regulatory authority by the Secretary of the U.S. Department of Interior.

The Director is approving this revision because it is no less stringent than section 507(c)(1) of SMCRA.

2. Alabama proposed to add new paragraph (h) to read as follows:

(h) A coal operator that has received assistance pursuant to subsection (c) (1) or (2) shall reimburse the regulatory authority for the cost of the services rendered if the program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

The Director is approving this revision because it is no less stringent than section 507(h) of SMCRA.

B. Section 9–16–91. Underground Coal Mining; Effects on Surface

Alabama proposed to add new paragraph (e) to read as follows:

(e) Underground coal mining operations conducted after the date of enactment of this section shall comply with each of the following requirements:

(1) Promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and structure related thereto, or non-commercial building due to underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and structures related thereto, or non-commercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and structures related thereto or non-commercial building and shall be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

(2) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations.

The Director is approving this revision because it is no less stringent than section 720 of SMCRA.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Alabama program.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. AL–0580). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. AL–0580). The Alabama Historical Commission (Commission) responded in a letter dated May 5, 1998 (Administrative Record No. AL–0582). The Commission wanted to know who defines the terms ''known'' and ''significant'' at section 9–16–83(b)(12) regarding archaeological sites and if the Alabama Surface Mining Commission (ASMC) or some other agency would pay for archaeological studies discussed at section 9–16–83(c)(1). The Commission also wanted clarification on what it meant to ''seal all portals'' at section 9–16–91(b)(2), and stated that there are historic portal facings which need to be preserved and that this issue needed to be more clearly addressed. In addition, at section 9–16–91(b)(7), the Commission wanted to know if the proximity of culturally significant sites to mining activities should be of more concern in cases where adverse effects could come from a greater distance, i.e., blasting. Furthermore, at section 9–16–91(b)(10), it wanted to know if other surface impacts not specified in section 9–16–91(b) would be subject to section 106 of the National Historic Preservation Act of 1966 if the ASMC received a permit. Finally, the Commission felt that significant cultural resources should be addressed at section 9–16–91(c)(1) which pertains to protecting the stability of the land.

Alabama did not propose to amend the above aforementioned sections of its statutes. In addition, these statute sections are substantially identical to the Federal statutes at sections 507 and 516 of SMCRA, and, therefore, are not inconsistent with the Federal requirement. In acting on State program amendments, the Director only addresses those sections of a State's laws and regulations where revisions are proposed by the State. However, OSM forwarded a copy of the Commission's comments to the ASMC for its consideration in future rulemaking.

The Commission made one other comment pertaining to Alabama's amendment. It stated that section 9–16–83(c)(1)(d) needed to be clarified and that a possible agreement be developed between the Commission and the ASMC. Section 9–16–83(c)(1)(d) pertains to one activity that the ASMC can provide assistance for to eligible mine operators if a surface coal mining operator does not exceed a total annual production of 300,000 tons at all its coal mining locations, and provided that funds are made available to the ASMC for such purposes by the Secretary of the United States Department of the Interior under the small operator assistance program (SOAP). The assistance allows the regulatory authority to obtain certain services on behalf of the operator to aid in the preparation of a permit application. This statute is substantially identical to the Federal statute at section 507(c)(1)(D) of SMCRA, and is, therefore, not inconsistent with the Federal requirement. Any clarification or agreement that the Commission feels a need for must be discussed directly with the ASMC.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Alabama on April 14, 1998.

The Federal regulations at 30 CFR Part 901, codifying decisions concerning the Alabama program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section.

However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 23, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*	*
April 14, 1998	July 6, 1998	Code of Ala. Sections 9–16–83(c) and (h); 9–16–91(e).

[FR Doc. 98–17526 Filed 6–30–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills; Determination Regarding State Statutes; Georgia, Florida and Connecticut

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Determination of substantially identical state statutes.

SUMMARY: The Department of the Treasury is announcing that it has reviewed the statutes of Georgia, Florida and Connecticut which have recently enacted laws adopting Revised Article 8 of the Uniform Commercial Code—Investment Securities (''Revised Article 8'') and determined that they are substantially identical to the uniform version of Revised Article 8 for purposes of interpreting the rules in 31 CFR Part 357, Subpart B (the ''TRADES'' regulations). Therefore, that portion of the TRADES rule requiring application of Revised Article 8 if a state has not adopted Revised Article 8 will no longer be applicable for those 3 states.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Dyson, Attorney-Advisor (202) 219–3320, or Cynthia E. Reese, Deputy Chief Counsel (202) 219–3320.

ADDRESSES: Copies of this notice are available for downloading from the Bureau of the Public Debt home page at: http://www.publicdebt.treas.gov.

SUPPLEMENTARY INFORMATION: On August 23, 1996, The Department published a final rule to govern securities held in the commercial book-entry system, now referred to as the Treasury/Reserve Automated Debt Entry System (''TRADES''), 61 FR 43626.

In the commentary to the final regulations, Treasury stated that for the 28 states that had by then adopted Revised Article 8, the versions enacted were ''substantially identical'' to the uniform version for purposes of the rule. Therefore, for those states, that portion of the TRADES rule requiring application of Revised Article 8 was not invoked. Treasury also indicated in the commentary that as additional states adopt Revised Article 8, notice would be provided in the **Federal Register** as to whether the enactments are substantially identical to the uniform version so that the federal application of Revised Article 8 would no longer be in effect for those states. Treasury adopted this approach in an attempt to provide certainty in application of the rule in response to public comments. Notices have subsequently been published setting forth Treasury's determination concerning 16 additional states' enactment of Revised Article. See (62 FR 26, January 2, 1997, 62 FR 34010, June 18, 1997, 62 FR 61912, November 20, 1997 and 63 FR 20099, April 23, 1998). Including the three states addressed herein this brings the number of states that have enacted Revised Article 8 and have been the subject of such a notice to 47. Treasury understands that several more states will soon enact versions of Revised Article 8. Treasury will review those enactments as soon as they are available and will issue notices of determination with respect to them.

This notice addresses the recent adoption of Article 8 by Georgia, Florida and Connecticut.

Treasury has reviewed the three state enactments and has concluded all of them are substantially identical to the uniform version of Revised Article 8. We note that in 1997 Connecticut adopted a version of Revised Article 8 upon which Treasury did not issue a determination (see 62 FR 61913, November 20, 1997).

That law was repealed and replaced with the 1998 Connecticut adoption of Revised Article 8, to which this notice applies.

Accordingly, if either § 357.10(b) or § 357.11(b) directs a person to Georgia, Florida and Connecticut, the provisions of §§ 357.10(c) and 357.11(d) of the TRADES rule are not applicable.

Dated: June 25, 1998.

Van Zeck,

Commissioner of the Public Debt.

[FR Doc. 98–17474 Filed 6–26–98; 5:03 pm]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501, 515 and 560

Cuban Assets Control Regulations; Iranian Transactions Regulations; Reporting and Procedures Regulations: Corrections

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations amending the Cuban Assets Control Regulations, published May 18, 1998 (63 FR 27349), the Iranian Transactions Regulations, published on August 4, 1997 (62 FR 41851), and to the issuance of the Reporting and Procedures Regulations, published on August 25, 1997 (62 FR 45098). The regulations related to the prohibitions on travel–related transactions in Cuba, the payment of awards and settlements relating to the Iran–U.S. Claims Tribunal in The Hague, and to the consolidation and standardization of information collection provisions administered by the Office of Foreign Assets Control.

EFFECTIVE DATE: June 26, 1998.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), David H. Harmon, Chief of Enforcement (tel.: 202/622–2430), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

The final regulations that are the subject of these corrections amended the Cuban Assets Control Regulations, 31 CFR part 515 (the ''CACR''), the Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), and the Reporting and Procedures Regulations, 31 CFR part 501 (the ''RPR'').

The CACR were amended to indicate the existence of a presumption that persons subject to U.S. jurisdiction who have traveled to Cuba without the authority of a general or specific license have necessarily engaged in prohibited travel–related transactions. This presumption is subject to rebuttal upon presentation of a statement, signed by the traveler and accompanied by appropriate supporting documentation, that (1) no transactions were entered into, or (2) the travel was fully hosted by a person or persons not subject to the jurisdiction of the United States and was not in exchange for services provided in Cuba or elsewhere.

The ITR were amended to authorize by general license the payment of awards against Iran issued by the Iran–U.S. Claims Tribunal in The Hague, and implementation (other that certain exports and reexports) and payment of awards and settlements to which the United States Government is a party. The final rule also authorized by general license the provision of certain legal services to the Government of Iran and persons in Iran.

Finally, the RPR consolidated and standardized in a single part common provisions on collections of information and procedures in existing regulations administered by the Office of Foreign Assets Control. This final rule included an initial and annual requirement to report on blocked assets or retained funds transfers — as well as periodic reports on funds transfers rejected by U.S. financial institutions — for administrative and foreign policy formulation purposes. The rule also required reports on U.S. litigation and other dispute resolution proceedings where the proceedings may affect blocked assets or funds retained by banks that have stopped violative transfers. In addition, new procedures were set forth for persons seeking the unblocking of funds they believe have been blocked due to mistaken identity, or seeking administrative review of their designation or that of a vessel as blocked. In addition, the reporting requirements and licensing and other procedures of the new part are made applicable to transactions that have become subject to economic sanctions programs for which implementation and administration are delegated to the Office of Foreign Assets Control.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations are corrected as follows:

1. The publication on May 18, 1998, which was the subject of FR Doc. 98–13120 amending the Cuban Assets Control Regulations, is corrected as follows. On page 27351, in the second column, amendatory instruction 2 is corrected to read: ''2. Paragraph (g) of § 515.560 is revised to read as follows:''.

2. The publication on August 4, 1997, which was the subject of FR Doc. 97–20447 amending the Iranian Transactions Regulations, is corrected as follows. On page 41852 in the third column, amendatory instruction 3 is corrected to read: ''3. The introductory text of paragraph (a) and paragraphs (a)(3) and (a)(5)(i) of § 560.525 are revised to read as follows:''.

3. The publication of August 25, 1997, which was the subject of FR Doc. 97–22378 issuing the Reporting and Procedures Regulations, is corrected as follows. On page 45104 in the third column, § 501.803 is corrected to read as follows:

§ 501.803 Amendment, modification, or revocation.

Except as otherwise provided by law, the provisions of each part of this chapter and any rulings, licenses (whether general or specific), authorizations, instructions, orders, or forms issued thereunder may be amended, modified or revoked at any time.

Dated: June 26, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 26, 1998.

Elisabeth Bresse,

Acting Assistant Secretary (Enforcement).

[FR Doc. 98–17539 Filed 6–30–98; 4:04 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 538

Sudanese Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is issuing the Sudanese Sanctions Regulations to implement the President's declaration of a national emergency and imposition of sanctions against Sudan.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

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Background

On November 3, 1997, the President issued Executive Order 13067 (62 FR 59989, Nov. 5, 1997), declaring a national emergency with respect to ''the policies and actions of the Government of Sudan,'' and invoking the authority, inter alia, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The order blocks all property and interests in property of the Government of Sudan, its agencies, instrumentalities, and controlled entities, including the Central Bank of Sudan, that are in the United States, that are or hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches; and orders other specific sanctions against Sudan. The order also authorizes the Secretary of the Treasury, in consultation with the Secretary of State and, as appropriate, other agencies, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the order. In implementation of the order, the Treasury Department is issuing the Sudanese Sanctions Regulations (the ''Regulations'').

Section 538.201 of the Regulations, implementing section 1 of Executive Order 13067 (the ''Executive Order''), blocks all property and interests in property of the Government of Sudan, its agencies, instrumentalities, and controlled entities, including the Central Bank of Sudan, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches. As interpreted by § 538.305 of the Regulations, § 538.201 also blocks all property and interests in property of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to be acting on behalf of, the Government of Sudan. Persons coming within any of these categories are called specially designated nationals (''SDNs''). Section 538.204 of the Regulations, implementing section 2(a) of the Executive Order, generally prohibits the importation into the United States of goods or services of Sudanese origin. Section 538.205 of the Regulations, implementing section 2(b) of the Executive Order, generally prohibits the exportation or reexportation to Sudan of goods, technology or services from the United States, by a U.S. person, or requiring the issuance of a license by a Federal agency. Section 538.206 of the Regulations, implementing section 2(c) of the Executive Order, prohibits the facilitation by a U.S. person of the exportation or reexportation of goods, technology or services to or from Sudan. Section 538.207 of the Regulations, implementing section 2(d) of the Executive Order, prohibits the performance by any U.S. person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Sudan. Section 538.208 of the Regulations, implementing section 2(e) of the Executive Order, prohibits the grant or extension of credits or loans by any U.S. person to the Government of Sudan. Section 538.209 of the Regulations, implementing section 2(f) of the Executive Order, prohibits transactions relating to the transportation of cargo to or from Sudan. Pursuant to section 3 of the Executive Order, § 538.211 of the Regulations exempts certain transactions from the prohibitions of the Executive Order and Regulations.

Transactions otherwise prohibited under this part but found to be consistent with U.S. policy may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in subpart D of part 501 of 31 CFR chapter V. Penalties for violations of the Regulations are described in subpart G of the Regulations.

Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553)(the ''APA'') requiring notice of proposed rulemaking, opportunity for

public participation and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The Regulations are being issued without prior notice and public comment procedure pursuant to the APA. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collections of information contained in the Regulations have been submitted to and approved by the Office of Management and Budget (''OMB'') pending public comment and has been assigned control number 1505–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Other collections of information related to the Regulations are contained in part 501 of this chapter (the ''Reporting and Procedures Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collections of information in part 501 have been approved by the Office of Management and Budget (''OMB'') under control number 1505–1604.

The new collections of information in the Regulations are contained in §§ 538.506 and 538.521. Section 538.506(d) imposes a reporting requirement in lieu of specific licensing for performance of certain trade transactions pursuant to contracts entered into prior to November 4, 1997. This information will be used to determine whether persons subject to the Regulations are in compliance with the applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate.

Section 538.521 requires nongovernmental organizations involved in humanitarian or religious activities in Sudan to obtain a registration number to engage in transactions otherwise prohibited by the Regulations. This information will be used to register applicants as nongovernmental organizations and to determine whether persons subject to the Regulations are in compliance with the applicable requirements.

The Regulations do not provide for confidential treatment of reports submitted pursuant to §§ 538.506 and 538.521. However, it is the policy of the Office of Foreign Assets Control to protect the confidentiality of information in appropriate cases pursuant to the exemptions from disclosure provided under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a).

The likely respondents and record keepers are humanitarian organizations, business organizations, and financial institutions.

The estimated total annual reporting and/or recordkeeping burden: 100 hours.

The estimated annual burden per respondent/record keeper varies from 1–3 hours, depending on individual circumstances, with and estimated average of 2 hours.

Estimated number of respondents and/or record keepers: 50.

Estimated annual frequency of responses: 1.

Comments are invited on: (a) whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimated capital or start–up costs and costs of operation maintenance, and purchase of services to provide information.

Comments concerning the above information, the accuracy of estimated average burden, and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project, control number 1505–0169, Washington, DC 20503, with a copy to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW–Annex, Washington, DC 20220. Any such comments should be submitted not later than August 31, 1998. Comments on aspects of the Regulations other than those involving collections of information should not be sent to the OMB.

List of Subjects in 31 CFR Part 538

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Penalties, Reporting and recordkeeping requirements, Specially designated nationals, Sudan, Terrorism, Transportation.

For the reasons set forth in the preamble, 31 CFR part 538 is added to read as follows:

PART 538—SUDANESE SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

538.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

538.201 Prohibited transactions involving blocked property.
538.202 Effect of transfers violating the provisions of this part.
538.203 Holding of funds in interest–bearing accounts; investment and reinvestment.
538.204 Prohibited importation of goods or services from Sudan.
538.205 Prohibited exportation and reexportation of goods, technology, or services to Sudan.
538.206 Prohibited facilitation.
538.207 Prohibited performance of contracts.
538.208 Prohibited grant or extension of credits or loans to the Government of Sudan.
538.209 Prohibited transportation–related transactions involving Sudan.
538.210 Evasions; attempts; conspiracies.
538.211 Exempt transactions.

Subpart C—General Definitions

538.301 Blocked account; blocked property.
538.302 Effective date.
538.303 Entity.
538.304 General license.
538.305 Government of Sudan.
538.306 Information and informational materials.
538.307 Interest.
538.308 License.
538.309 Person.
538.310 Property; property interest.
538.311 Specific license.
538.312 Sudanese origin.
538.313 Transfer.
538.314 United States.
538.315 United States person; U.S. person.
538.316 U.S. financial institution.

Subpart D—Interpretations

538.401 Reference to amended sections.
538.402 Effect of amendment.
538.403 Termination and acquisition of an interest in blocked property.
538.404 Setoffs prohibited.
538.405 Transactions incidental to a licensed transaction.
538.406 Exportation of services; performance of service contracts; legal services.
538.407 Facilitation by a United States person.
538.408 Offshore transactions.
538.409 Transshipments through the United States prohibited.
538.410 Imports of Sudanese goods from third countries; transshipments.
538.411 Exports to third countries; transshipments.
538.412 Operation of accounts.
538.413 Funds transfers.
538.414 Loans or extensions of credit.
538.415 Payments involving Sudan.
538.416 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

538.501 Effect of license or authorization.
538.502 Exclusion from licenses and authorizations.
538.503 Payments and transfers to blocked accounts in U.S. financial institutions.
538.504 Entries in certain accounts for normal service charges authorized.
538.505 Provision of certain legal services to the Government of Sudan, persons in Sudan, or benefitting Sudan.
538.506 30–day delayed effective date for pre–November 4, 1997 trade contracts involving Sudan.
538.507 Reexports by non–U.S. persons.
538.508 Certain payments by the Government of Sudan of obligations to persons within the United States authorized.
538.509 Certain services relating to participation in various events authorized.
538.510 Importation and exportation of certain gifts authorized.
538.511 Accompanied baggage authorized.
538.512 Transactions related to telecommunications authorized.
538.513 Transactions related to mail authorized.
538.514 Certain transactions related to patents, trademarks and copyrights authorized.
538.515 Certain imports for diplomatic or official personnel authorized.
538.516 Diplomatic pouches.
538.517 Allowable payments for overflights of Sudanese airspace.
538.518 Household goods and personal effects.
538.519 Aircraft and maritime safety.
538.520 Extensions or renewals of loans and credits.
538.521 Registration of nongovernmental organizations.
538.522 Transactions related to U.S. citizens residing in Sudan.

Subpart F—Reports

538.601 Records and reports.

Subpart G—Penalties

538.701 Penalties.
538.702 Prepenalty notice.
538.703 Response to prepenalty notice; informal settlement.
538.704 Penalty imposition or withdrawal.
538.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

538.801 Procedures.
538.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

538.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230.

Subpart A—Relation of This Part to Other Laws andRegulations

§ 538.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 538.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, no property or interests in property of the Government of Sudan, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of the Government of Sudan, and held within the possession or control of a U.S. person is prohibited, irrespective of the fact that at any time (either prior to, on, or subsequent to the effective date) the registered or inscribed owner thereof may have, or appears to have, assigned, transferred, or otherwise disposed of any such security.

(c) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

§ 538.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date, which is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, license, or other authorization hereunder and involves any property or interest in property blocked pursuant to § 538.201 is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property or interest in property blocked pursuant to § 538.201, unless the person with whom such property is held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required

a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization hereunder; or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d): The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to § 538.201.

§ 538.203 Holding of funds in interest–bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 538.201(a) shall hold or place such funds in a blocked interest–bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest–bearing account* means a blocked account:

(i) In a federally–insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates which are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury Bills.

(2) For purposes of this section, a rate is *commercially reasonable* if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or sub–account, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 538.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest–bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 538.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates which are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 538.201. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner which provides immediate financial or economic benefit or access to the Government of Sudan or its entities, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 538.204 Prohibited importation of goods or services from Sudan.

Except as otherwise authorized, the importation into the United States, directly or indirectly, of any goods or services of Sudanese origin, other than information or informational materials, is prohibited.

§ 538.205 Prohibited exportation and reexportation of goods, technology, or services to Sudan.

Except as otherwise authorized, the exportation or reexportation, directly or indirectly, to Sudan of any goods, technology (including technical data, software, or other information) or services from the United States or by a United States person, wherever located, or requiring the issuance of a license by a Federal agency is prohibited, except for information or informational materials or donations of articles intended to relieve human suffering, such as food, clothing, and medicine.

§ 538.206 Prohibited facilitation.

Except as otherwise authorized, the facilitation by a United States person, including but not limited to brokering activities, of the exportation or reexportation of goods, technology, or services from Sudan to any destination, or to Sudan from any location, is prohibited.

§ 538.207 Prohibited performance of contracts.

Except as otherwise authorized, the performance by any United States person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Sudan is prohibited.

§ 538.208 Prohibited grant or extension of credits or loans to the Government of Sudan.

Except as otherwise authorized, the grant or extension of credits or loans by any United States person to the Government of Sudan is prohibited.

§ 538.209 Prohibited transportation–related transactions involving Sudan.

Except as otherwise authorized, the following are prohibited:

(a) Any transaction by a U.S. person relating to transportation of cargo to or from Sudan;

(b) The provision of transportation of cargo to or from the United States by any Sudanese person or any vessel or aircraft of Sudanese registration; or

(c) The sale in the United States by any person holding authority under 49 U.S.C. subtitle VII of any transportation of cargo by air that includes any stop in Sudan.

§ 538.210 Evasions; attempts; conspiracies.

Any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this part is prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

§ 538.211 Exempt transactions.

(a) *Personal Communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal

communication, which does not involve the transfer of anything of value.

(b) *Information and informational materials.* (1) The importation from any country and the exportation to any country of information or informational materials as defined in § 538.306, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(2) This section does not authorize transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, without limitation, payment of advances for informational materials not yet created and completed, provision of services to market, produce or co–produce, create or assist in the creation of information and informational materials, and payment of royalties to the Government of Sudan or a person in Sudan with respect to income received for enhancements or alterations made by U.S. persons to information or informational materials imported from the Government of Sudan or a person in Sudan.

(3) This section does not authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730–774, or to the exportation of goods, technology or software for use in the transmission of any data. The exportation of such items to the Government of Sudan or to Sudan is prohibited, as provided in §§ 538.201 and 538.205.

(c) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including exportation or importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including non–scheduled air, sea, or land voyages.

(d) *Official Business.* The prohibitions contained in this part do not apply to transactions for the conduct of the official business of the Federal Government or the United Nations by employees thereof.

(e) *Journalistic activity.* The prohibitions contained in this part do not apply to transactions in Sudan for journalistic activity by persons regularly employed in such capacity by a news–gathering organization.

Subpart C—General Definitions

§ 538.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibition in § 538.201 held in the name of the Government of Sudan or in which the Government of Sudan has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

§ 538.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m. EST, November 4, 1997.

§ 538.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

§ 538.304 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 538.305 Government of Sudan.

The term *Government of Sudan* includes:

(a) The state and the Government of Sudan, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Sudan;

(b) Any entity owned or controlled by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any other person determined by the Director of the Office of Foreign Assets Control to be included within paragraphs (a) through (c) of this section.

Note to § 538.305: Please refer to the appendices at the end of this chapter for listings of persons determined to fall within this definition who have been designated pursuant to this part. Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

§ 538.306 Information and informational materials.

(a)(1) For purposes of this part, the term *information and informational materials* means publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds, and other information and informational materials.

(2) To be considered informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information and informational materials* with respect to U.S. exports does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (the ''EAA''), or section 6 of the EAA to the extent that such controls promote nonproliferation or antiterrorism policies of the United States.

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 538.307 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., '' an interest in property'') means an interest of any nature whatsoever, direct or indirect.

§ 538.308 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 538.309 Person.

The term *person* means an individual or entity.

§ 538.310 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds,

ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 538.311 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part.

§ 538.312 Sudanese origin.

The term *goods or services of Sudanese origin* includes:

(a) Goods produced, manufactured, grown, extracted, or processed within Sudan;

(b) Goods which have entered into Sudanese commerce;

(c) Services performed in Sudan or by a person ordinarily resident in Sudan who is acting as an agent, employee, or contractor of the Government of Sudan or of a business entity located in Sudan. Services of Sudanese origin are not imported into the United States when such services are provided in the United States by a Sudanese national employed or resident in the United States.

(d) The term *services of Sudanese origin* does not include:

(1) Diplomatic and consular services performed by or on behalf of the Government of Sudan;

(2) Diplomatic and consular services performed by or on behalf of the Government of the United States.

§ 538.313 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 538.314 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 538.315 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 538.316 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including, but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 538.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 538.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 538.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from the Government of Sudan, such property shall no longer be deemed to be property in which the Government of Sudan has or has had an interest unless there exists in the property another interest of the Government of Sudan, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to the Government of Sudan, such property shall be deemed to be property in which there exists an interest of the Government of Sudan.

§ 538.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 538.201 if effected after the effective date.

§ 538.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except a transaction by an unlicensed Sudanese governmental entity or involving a debit to a blocked account or a transfer of blocked property not explicitly authorized within the terms of the license.

§ 538.406 Exportation of services; performance of service contracts; legal services.

(a) The prohibition on the exportation of services contained in § 538.205 applies to services performed on behalf of the Government of Sudan, or where the benefit of such services is otherwise received in Sudan, when such services are performed:

(1) In the United States;

(2) By a U.S. person, wherever located;

(3) By an entity located in the United States, including its overseas branches; or

(4) Outside the United States by an individual U.S. person ordinarily resident in the United States.

(b) The benefit of services performed anywhere in the world on behalf of the Government of Sudan, including services performed for a controlled entity or agent of the Government of Sudan, is presumed to be received in Sudan.

(c) The prohibitions contained in §§ 538.201 and 538.207 apply to services performed by U.S. persons, wherever located:

(1) On behalf of the Government of Sudan;

(2) With respect to property interests of the Government of Sudan; or

(3) In support of an industrial, commercial, public utility or governmental project in Sudan.

(d) *Example:* U.S. persons may not, without specific authorization from the Office of Foreign Assets Control, represent an individual or entity with respect to contract negotiations, contract performance, commercial arbitration, or other business dealings with the Government of Sudan. See § 538.505 on licensing policy with regard to the provision of certain legal services.

§ 538.407 Facilitation by a United States person.

(a) The prohibition contained in § 538.206 against facilitation by a United States person of the exportation or reexportation of goods, technology, or services between Sudan and any destination (including the United States) bars any unlicensed action by a U.S. person that assists or supports trading activity with Sudan by any person. Facilitation of a trade or financial transaction that could be engaged in directly by a U.S. person or from the United States consistent with the prohibitions, general licenses and exemptions contained in this part is not prohibited. Activity of a purely clerical or reporting nature that does not further trade or financial transactions with Sudan or the Government of Sudan is not considered prohibited facilitation. For example, reporting on the results of a subsidiary's trade with Sudan is not prohibited, while financing or insuring that trade or warranting the quality of goods sold by a subsidiary to the Government of Sudan constitutes prohibited facilitation.

(b) To avoid potential liability for U.S. persons under this part, a U.S. parent corporation must ensure that its foreign subsidiaries act independently of any U.S. person with respect to all transactions and activities relating to the exportation or reexportation of goods, technology, or services between Sudan and any other location including but not limited to business and legal planning; decision making; designing, ordering or transporting goods; and financial, insurance, and other risks. See § 538.505 with respect to exports of, *inter alia*, certain legal services benefitting Sudan.

(c) No U.S. person may change its policies or operating procedures, or those of a foreign affiliate or subsidiary, in order to enable a foreign entity owned or controlled by U.S. persons to enter into a transaction that could not be entered into directly by a U.S. person or from the United States pursuant to this part.

(d) No U.S. person may refer to a foreign person purchase orders, requests for bids, or similar business opportunities involving Sudan or the Government of Sudan to which the United States person could not directly respond as a result of the prohibitions contained in this part.

§ 538.408 Offshore transactions.

(a) The prohibitions contained in §§ 538.201 and 538.206 apply to transactions by any U.S. person in a location outside the United States with respect to property in which the U.S. person knows, or has reason to know, the Government of Sudan has or has had an interest since the effective date, or with respect to goods, technology or services which the U.S. person knows, or has reason to know, are of Sudanese origin or owned or controlled by the Government of Sudan.

(b) Prohibited transactions include, but are not limited to, importation into or exportation from locations outside the United States of, or purchasing, selling, financing, swapping, insuring, transporting, lifting, storing, incorporating, transforming, brokering, or otherwise dealing in, within such locations, goods, technology or services of Sudanese origin.

(c) *Examples.* (1) A U.S. person may not, within the United States or abroad, purchase, sell, finance, insure, transport, act as a broker for the sale or transport of, or otherwise deal in, Sudanese crude oil or sugar refined in Sudan.

(2) A U.S. person may not, within the United States or abroad, conduct transactions of any nature whatsoever with an entity that the U.S. person knows or has reason to know is the Government of Sudan, including a controlled entity or agent of that Government, or which benefits or supports the business of an entity located in Sudan, unless the entity is licensed by the Office of Foreign Assets Control to conduct such transactions with U.S. persons or the transaction is generally licensed in, or exempted from the prohibitions of, this part.

§ 538.409 Transshipments through the United States prohibited.

(a) The prohibitions in § 538.205 apply to the importation into the United States, for transshipment or transit, of goods which are intended or destined for Sudan, or an entity operated from Sudan.

(b) The prohibitions in § 538.204 apply to the importation into the United States, for transshipment or transit, of goods of Sudanese origin which are intended or destined for third countries.

(c) Goods in which the Government of Sudan has an interest which are imported into or transshipped through the United States are blocked pursuant to § 538.201.

§ 538.410 Imports of Sudanese goods from third countries; transshipments.

(a) Importation into the United States from third countries of goods containing raw materials or components of Sudanese origin is not prohibited if those raw materials or components have been incorporated into manufactured products or otherwise substantially transformed in a third country.

(b) Importation into the United States of goods of Sudanese origin that have been transshipped through a third country without being incorporated into manufactured products or otherwise substantially transformed in a third country are prohibited.

§ 538.411 Exports to third countries; transshipments.

Exportation of goods or technology (including technical data, software, information not exempted from the prohibition of this part pursuant to § 538.211, or technical assistance) from the United States to third countries is prohibited if the exporter knows, or has reason to know, that the goods or technology are intended for transshipment to Sudan (including passage through, or storage in, intermediate destinations). The

exportation of goods or technology intended specifically for incorporation or substantial transformation into a third–country product is also prohibited if the particular product is to be used in Sudan, is being specifically manufactured to fill a Sudanese order, or if the manufacturer's sales of the particular product are predominantly to Sudan.

§ 538.412 Operation of accounts.

The operation of an account in a financial institution for a private Sudanese person does not constitute the exportation of a service to Sudan; however, such operation may not include the execution of transactions in support of transactions or activities prohibited by subpart B of this part.

§ 538.413 Funds transfers.

The transfer of funds to Sudan from the United States does not constitute an exportation of services pursuant to § 538.205.

§ 538.414 Loans or extensions of credit.

(a) The prohibition in § 538.205 applies to loans or extensions of credit to a person in Sudan, including overdraft protection on checking accounts, and the unlicensed renewal or rescheduling of credits or loans in existence as of the effective date, whether by affirmative action or operation of law.

(b) The prohibition in § 538.205 applies to financial services including loans or credits extended in any currency.

§ 538.415 Payments involving Sudan.

Before a United States financial institution initiates a payment subject to the prohibitions contained in this part on behalf of any customer, or credits a transfer subject to such prohibitions to the account on its books of the ultimate beneficiary, the U.S. financial institution must determine that the transfer is not prohibited by this part.

§ 538.416 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

No debits may be made to a blocked account to pay obligations to U.S. persons or other persons, including payment for goods, technology or services exported prior to the effective date, except as authorized pursuant to this part.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 538.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 538.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 538.503 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which the Government of Sudan has any interest, that comes within the possession or control of a U.S. financial institution, must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

Note to § 538.503: Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 538.203 concerning the obligation to hold blocked funds in interest–bearing accounts.

§ 538.504 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are hereby authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 538.505 Provision of certain legal services to the Government of Sudan, persons in Sudan, or benefitting Sudan.

(a) The provision to the Government of Sudan, to a person in Sudan, or in circumstances in which the benefit is otherwise received in Sudan, of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipts of payment therefor must be specifically licensed. The provision of any other legal services as interpreted in § 538.406 requires the issuance of a specific license.

(b) Specific licenses may be issued, on a case–by–case basis, authorizing receipt, from unblocked sources, of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to the Government of Sudan or to a person in Sudan:

(1) Provision of legal advice and counseling to the Government of Sudan, to a person in Sudan, or in circumstances in which the benefit is otherwise received in Sudan, on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling is not provided to

facilitate transactions in violation of this part;

(2) Representation of the Government of Sudan or a person in Sudan when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction of the Government of Sudan, or of a person in Sudan;

(4) Representation of the Government of Sudan or a person in Sudan before any federal agency with respect to the imposition, administration, or enforcement of U.S. sanctions against Sudan; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(c) Enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment or other judicial process purporting to transfer or otherwise alter or affect a property interest of the Government of Sudan is prohibited unless specifically licensed in accordance with § 538.202(e).

§ 538.506 30–day delayed effective date for pre–November 4, 1997 trade contracts involving Sudan.

(a) *Pre–existing trade contracts.* Trade transactions required under a contract entered into prior to November 4, 1997 (a ''pre–existing trade contract''), otherwise prohibited by this part, including the importation of goods or services of Sudanese origin or the exportation of goods, services, or technology that was authorized under applicable Federal regulations in force immediately prior to November 4, 1997, are authorized without specific licensing by the Office of Foreign Assets Control as follows:

(1) Exports or reexports are authorized until 12:01 a.m. EST, December 4, 1997, and non–financing activity by U.S. persons incidental to the performance of the pre–existing trade contract (such as the provision of transportation or insurance) is authorized through 12:01 a.m. EST, February 2, 1998, if the pre–existing trade contract is for:

(i) The exportation of goods, services, or technology from the United States or a third country that was authorized under applicable Federal regulations in force immediately prior to November 4, 1997; or

(ii) The reexportation of goods or technology that was authorized under applicable Federal regulations in force immediately prior to November 4, 1997.

(2) If the pre–existing trade contract is for the importation of goods or services of Sudanese origin or other trade transactions relating to goods or services of Sudanese origin or owned or controlled by the Government of Sudan, importations under the pre–existing trade contract are authorized until 12:01 a.m. EST, December 4, 1997.

(3) For purposes of this section, goods are considered to be exported upon final loading aboard the exporting conveyance in the country of export. Goods are considered to be imported upon arrival in the jurisdiction of the country of importation.

(b)(1) *Financing for pre–existing trade contracts.* In general, no financing services prohibited by this part may be performed after 12:01 a.m. EST, November 4, 1997. However, letters of credit and other financing agreements with respect to the trade transactions authorized in paragraph (a) of this section may be performed according to their terms, and may be extended or renewed, except that:

(i) Any payment required to be made to the Government of Sudan or any person blocked pursuant to this part or otherwise, including payments authorized with respect to trade transactions described in paragraph (a) of this section, must be made into a blocked account in the United States; and

(ii) No payment may be made from a blocked account unless authorized by a specific license issued by the Office of Foreign Assets Controls.

(2) Specific licenses may be issued by the Office of Foreign Asset Controls on a case–by–case basis to permit a U.S. bank to debit a blocked account of the Government of Sudan for funds held as collateral under an irrevocable letter of credit issued or confirmed by it, or a letter of credit reimbursement confirmed by it, for goods, services or technology exported, or goods or technology reexported, prior to 12:01 a.m. EST, December 4, 1997, directly or indirectly to Sudan, or to third countries for an entity operated from Sudan, or for the benefit of the Government of Sudan. The application for a license must:

(i) Present evidence satisfactory to the Office of Foreign Asset Controls that the exportation or reexportation occurred prior to 12:01 a.m. EST, December 4, 1997; and

(ii) Include an explanation of the facts and circumstances surrounding the entry and execution of the export or reexport transaction, including the names and addresses of all Sudanese participants in the transaction and all Sudanese persons having an ownership interest in the beneficiary of the letter of credit.

(c) *Blocked Government of Sudan accounts.* Nothing in this section permits debits to a blocked account of the Government of Sudan absent the issuance of a specific license by Office of Foreign Asset Controls authorizing such a debit. The operation of an account of the Government of Sudan in a financial institution does not constitute a trade transaction for purposes of this section.

(d) *Existence of contract.* The existence of a contract will be determined with reference to the principles contained in Article 2 of the Uniform Commercial Code.

(e) *Reporting requirement.* Although a specific license from Office of Foreign Asset Controls is not required for any transaction authorized in paragraph (a) of this section, any U.S. person engaging in a transaction described in paragraph (a) of this section is required to report such transaction immediately to the Office of Foreign Asset Controls and provide a description of the underlying trade contract. Such reports should be directed to the Office of Foreign Assets Control, Attn: Compliance Programs Division/Sudan Contracts, 1500 Pennsylvania Avenue, NW, Annex – 2nd Floor, Washington, DC 20220. Such reports may be made by facsimile transmission to 202/622–1657.

(f) *Licensing and reporting provisions.* For provisions relating to applications to the Office of Foreign Asset Controls for specific licenses and reporting requirements, see §§ 501.606 and 501.808 of this chapter.

§ 538.507 Reexports by non–U.S. persons.

(a) *Goods, technology and services subject to export license application requirements under other United States regulations.* The reexportation to Sudan or the Government of Sudan by a non–U.S. person of any goods, technology or services exported from the United States, the exportation of which to Sudan is subject to export or reexport license application requirements is authorized under this section provided that, for reexportation of goods, the goods:

(1) Have been incorporated into another product outside the United States and constitute 10 per cent or less by value of that product exported from a third country; or

(2) Have been substantially transformed outside the United States.

Note to paragraph (a) of § 538.507: Goods, technology and software of U.S. origin that are subject to the Export Administration Regulations (15 CFR parts 730–774) may require specific authorization from the

Department of Commerce, Bureau of Export Administration, even though such goods have been substantially transformed abroad.

(b) *Goods, technology and services not subject to export license application requirements under other United States regulations.* The reexportation to Sudan or the Government of Sudan by a non–U.S. person of any goods, technology or services of U.S. origin, the exportation of which to Sudan is not subject to any export license application requirements under any other United States regulations, is authorized under this section. However, the reexportation by non–U.S. persons of U.S.–origin goods, technology or software classified as EAR99 under the Export Administration Regulations (15 CFR parts 730–774) may require specific authorization from the Department of Commerce, Bureau of Export Administration.

§ 538.508 Certain payments by the Government of Sudan of obligations to persons within the United States authorized.

Specific licenses may be issued on a case–by–case basis to permit the transfer of funds after the effective date by, through, or to any U.S. financial institution or other U.S. person not blocked pursuant to this chapter, from a non–blocked account outside of the United States, solely for the purpose of payment of obligations of the Government of Sudan to persons or accounts within the United States, provided that the obligation arose prior to the effective date, and the payment requires no debit to a blocked account.

§ 538.509 Certain services relating to participation in various events authorized.

The importation of Sudanese–origin services into the United States is authorized where such services are performed in the United States by a Sudanese national who enters the United States on a visa issued by the State Department for the purpose of participating in a public conference, performance, exhibition or similar event, and such services are consistent with that purpose.

§ 538.510 Importation and exportation of certain gifts authorized.

The importation into the United States of Sudanese–origin goods, and the exportation from the United States of goods, is authorized for goods sent as gifts to persons provided that the value of the gift is not more than $100; the goods are of a type and in quantities normally given as gifts between individuals; and the goods are not controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), or nuclear proliferation (NP)(see Commerce Control List, 15 CFR part 774 of the Export Administration Regulations).

§ 538.511 Accompanied baggage authorized.

(a) Persons entering the United States directly or indirectly from Sudan are authorized to import into the United States Sudanese–origin accompanied baggage normally incident to travel.

(b) Persons leaving the United States for Sudan are authorized to export from the United States accompanied baggage normally incident to travel.

(c) For purposes of this section, the term *accompanied baggage normally incident to travel* includes only baggage that:

(1) Accompanies the traveler on the same aircraft, train, or vehicle;

(2) Includes only articles that are necessary for personal use incident to travel, are not intended for any other person or for sale, and are not otherwise prohibited from importation or exportation under applicable United States laws.

§ 538.512 Transactions related to telecommunications authorized.

All transactions with respect to the receipt and transmission of telecommunications involving Sudan are authorized. This section does not authorize the provision to the Government of Sudan or a person in Sudan of telecommunications equipment or technology.

§ 538.513 Transactions related to mail authorized.

All transactions by U.S. persons, including payment and transfers to common carriers, incident to the receipt or transmission of mail between the United States and Sudan are authorized, provided that mail is limited to personal communications not involving a transfer of anything of value.

§ 538.514 Certain transactions related to patents, trademarks and copyrights authorized.

(a) All of the following transactions in connection with patent, trademark, copyright or other intellectual property protection in the United States or Sudan are authorized:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright or other form of intellectual property protection;

(2) The receipt of a patent, trademark, copyright or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright or other form of intellectual property protection; and

(4) The filing and prosecution of opposition or infringement proceedings with respect to a patent, trademark, copyright or other form of intellectual property protection, or the entrance of a defense to any such proceedings.

(b) This section authorizes the payment of fees currently due to the United States Government, or of the reasonable and customary fees and charges currently due to attorneys or representatives within the United States, in connection with the transactions authorized in paragraph (a) of this section. Payment effected pursuant to the terms of this paragraph may not be made from a blocked account.

(c) This section authorizes the payment of fees currently due to the Government of Sudan, or of the reasonable and customary fees and charges currently due to attorneys or representatives within Sudan, in connection with the transactions authorized in paragraph (a) of this section.

(d) Nothing in this section affects obligations under any other provision of law.

§ 538.515 Certain imports for diplomatic or official personnel authorized.

All transactions ordinarily incident to the importation of any goods or services into the United States destined for official or personal use by the diplomatic missions of the Government of Sudan to the United States and to international organizations located in the United States are authorized, provided that such goods or services are not for resale, and unless such importation is otherwise prohibited by law.

§ 538.516 Diplomatic pouches.

All transactions in connection with the importation into the United States from Sudan, or the exportation from the United States to Sudan, of diplomatic pouches and their contents are authorized.

§ 538.517 Allowable payments for overflights of Sudanese airspace.

Payments to Sudan of charges for services rendered by the Government of Sudan in connection with the overflight of Sudan or emergency landing in Sudan of aircraft owned by a United States person or registered in the United States are authorized.

§ 538.518 Household goods and personal effects.

(a) The exportation from the United States to Sudan of household and personal effects, including baggage and articles for family use, of persons

departing the United States to relocate in Sudan is authorized provided the articles included in such effects have been actually used by such persons or by family members accompanying them, are not intended for any other person or for sale, and are not otherwise prohibited from exportation.

(b) The importation of Sudanese–origin household and personal effects, including baggage and articles for family use, of persons arriving in the United States is authorized; to qualify, articles included in such effects must have been actually used abroad by such persons or by other family members arriving from the same foreign household, must not be intended for any other person or for sale, and must not be otherwise prohibited from importation.

§ 538.519 Aircraft and maritime safety.

Specific licenses may be issued on a case–by–case basis for the exportation and reexportation of goods, services, and technology to insure the safety of civil aviation and safe operation of U.S.–origin commercial passenger aircraft, and to ensure the safety of ocean–going maritime traffic in international waters.

§ 538.520 Extensions or renewals of loans and credits.

(a) Specific licenses may be issued on a case–by–case basis for rescheduling loans or otherwise extending the maturities of existing loans, and for charging fees or interest at commercially reasonable rates in connection therewith, provided that no new funds or credits are thereby transferred or extended to Sudan or the Government of Sudan.

(b) Specific licenses may be issued on a case–by–case basis, at the request of the account party, for the extension or renewal of a letter of credit or a standby letter of credit issued or confirmed by a U.S. financial institution.

§ 538.521 Registration of nongovernmental organizations.

(a) Registration numbers may be issued on a case–by–case basis for the registration of nongovernmental organizations involved in humanitarian or religious activities in Sudan, authorizing transactions otherwise prohibited by this part, including the exportation of goods and services to Sudan and the transfer of funds to and from Sudan for the purpose of relieving human suffering.

(b) Applications for registration must include the name and address of the organization's headquarters; the name, title, and telephone number of a person to be contacted in connection with registration pursuant to this section; the organization's local address in Sudan and name if different; and a detailed description of its humanitarian or religious activities and projects in Sudan. Applications should be submitted to the Compliance Programs Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex, Washington, DC 20220.

(c) Applicants conducting transactions pursuant to this section should reference the registration number on all funds transfers, and all purchase, shipping, and financing documents.

§ 538.522 Transactions related to U.S. citizens residing in Sudan.

U.S. persons are authorized to engage in transactions in Sudan ordinarily incident to the routine and necessary maintenance and other personal living expenses of U.S. citizens who reside on a permanent basis in Sudan.

Subpart F—Reports

§ 538.601 Records and reports.

For additional provisions relating to records and reports, see subpart C of part 501 of this chapter.

Subpart G—Penalties

§ 538.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'')(50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty not to exceed $11,000 per violation may be imposed on any person who violates any license, order, or regulation issued under the Act;

(2) Whoever willfully violates any license, order, or regulation issued under the Act shall, upon conviction be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 538.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 537.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent shall have 30 days from the date of mailing of the prepenalty notice to make a written response to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of response.* The written response need not be in any

particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the respondent believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

(c) *Informal settlement.* In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30–day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

§ 537.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any response to the prepenalty notice, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition of the monetary penalty to the respondent.

(1) The penalty notice shall inform the respondent that payment of the assessed penalty must be made within 30 days of the mailing of the penalty notice.

(2) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collection and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 537.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 538.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

§ 538.802 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 13067 (3 CFR, 1997 Comp., p. 230), and any further Executive orders relating to the national emergency declared with respect to Sudan in Executive Order 13067, may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 538.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 538.506 and 538.521 have been approved by the Office of Management and Budget (''OMB'') and assigned control number 1505–0169. For approval by OMB under the Paperwork Reduction Act of other information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: June 18, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 25, 1998.

James E. Johnson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 98–17538 Filed 6–29–98; 8:51 am]

BILLING CODE 4810–25–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–036]

RIN 2115–AE47

Drawbridge Operation Regulation; Lake Pontchartrain, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is temporarily changing the regulation for the operation of the draws of the Greater New Orleans Expressway Commission causeway, north bascule spans across Lake Pontchartrain between Metairie, Jefferson Parish and Mandeville, St. Tammany Parish, Louisiana. From July 6, 1998 through November 10, 1998, the draws will remain closed to navigation Monday through Saturday except for September 5, 6, 7, 24, 25, 26, 27, 28 and 29, 1998 and October 10, 11 and 12, 1998. During these closure periods there will be crane barges under the bridge to support equipment. On Sundays and on September 5, 6, 7, 24, 25, 26, 27, 28 and 29, 1998, October 10, 11 and 12, 1998, the draws will open on signal if at least three hours notice is given. In the event of an approaching tropical storm or hurricane, the draw will return to normal operation within 12 hours and the channel cleared of all construction equipment. This temporary rule is issued to allow for cleaning and painting of the bascule structure, an extensive but necessary maintenance operation.

DATES: This temporary rule is effective from July 6, 1998 through November 10, 1998.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch,

Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday though Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary rule.

FOR FURTHER INFORMATION CONTACT: Phil Johnson or David Frank, Bridge Administration Branch, at the address given above.

SUPPLEMENTARY INFORMATION: On April 10, 1998, the Coast Guard issued a temporary deviation from the regulation governing the operation of the draws of the Greater New Orleans Expressway Commission causeway, north bascule spans across Lake Pontchartrain, to allow the draw to remain closed Monday through Saturday from May 4, 1998 through July 2, 1998. The deviation was issued to allow for the cleaning and painting of the bascule structures. However, the contractor was unable to mobilize for reasons including contract negotiation, acquisition of insurance and impeded access to the job site due to a navigation lock closure. The Greater New Orleans Expressway Commission has requested the Coast Guard issue a temporary rule to allow the work to begin on July 6, 1998 and to continue through November 10, 1998. The deteriorated condition of the bridge warrants the closures so that remedial work can be accomplished. The Coast Guard was not notified in time to issue a notice of proposed rulemaking. For this reason, good cause exists to make this temporary rule effective in less than 30 days after publication.

Background and Purpose

The south channel span of the Greater New Orleans Expressway Commission causeway across Lake Pontchartrain Louisiana provides an alternate route with a vertical clearance of 50 feet above mean high water. Navigation on the waterway consists of small tugs with tows, fishing vessels, sailing vessels, and other recreational craft. The special equipment used for this procedure has to be removed each time the draw span is opened. Since this process is time consuming and costly, the equipment must remain in place for 6-day periods, allowing the contractor to maximize work time. While the draw span being serviced is in the closed to navigation position, the equipment will be supported by two crane barges which must remain in place below the draw span. As a result, the channel will be completely blocked by the barges. The short term inconvenience, attributable to a delay of vessel traffic which is not able to use the south channel span as an alternate route, for a maximum of six days, is outweighed by the long term benefits to be gained by keeping the bridges free of corrosion and in proper working condition. This work is essential for the continued operation of the draw spans. Presently, the draws open on signal if at least three hours notice is given.

Regulatory Evaluation

This temporary rulemaking is not a significant regulation action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This is because the majority of vessels affected by the closure is minimal. The majority of commercial vessel and most of the recreational sailboats which normally transit the causeway bridge are able to do so at one of the navigation humps, located at four mile intervals along the bridge, or though the south channel span, which provides a vertical clearance of 50 feet above mean high water.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Cost Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. ''Small entities''may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The majority of commercial vessels and fishing vessels which normally transit the causeway bridge will still be able to do so through the south channel span. Thus, the Coast Guard expects there to be no significant economic impact on these vessels. The Coast Guard is not aware of any other waterway who would suffer economic hardship from being unable to transit the waterway during these closure periods. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal in under the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary rule and concluded that this action is categorically excluded from further environmental documentation under current Coast Guard CE #32(e), in accordance with Section 2.B.2 and Figure 2–1 of the National Environment Protection Act Implementing Procedures, COMDTINST M16475.1C. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending part 117, Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; and 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Public Law 102–587, 106 Stat. 5039.

2. Effective July 6, 1998 through November 10, 1998, § 117.467 is amended by suspending paragraph (b) and adding paragraph (c) to read as follows:

§ 117.467 Lake Pontchartrain.

* * * * *

(c) From July 6, 1998 through November 10, 1998 the draws of the Greater New Orleans Expressway Commission causeway, north bascule span, need not open for the passage of vessels Monday through Saturday except for September 5, 6, 7, 24, 25, 26, 27, 28 and 29, 1998 and October 10, 11 and 12, 1998. From 12:01 a.m. on Sundays to 12:01 a.m. on Mondays and on September 5, 6, 7, 24, 25, 26, 27, 28

and 29 and October 10, 11 and 12, 1998 the draws will open on signal if at lease three hours notice is given. In the event of an approaching tropical storm on hurricane, the channel will be cleared and the draws will return to normal operation within 12 hours.

Dated: June 23, 1998.

A.L. Gerfin, Jr.

Captain, U.S. Coast Guard, Commander, 8th Coat Guard Dist. Acting.

[FR Doc. 98–17510 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 79–116]

RIN 2115–AA03

Qualifications for Tankermen and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Final rule; establishment of dates for compliance.

SUMMARY: The Coast Guard modifies the qualification requirements for some Persons in Charge (PICs) of transfers of fuel oil and establish the date for compliance with the modified requirements. This modification is necessary to address public concern and implement the Final Rule, which, in the part addressed here, reduces the risk and severity of spillage from vessels involved in fuel-oil transfers. The requirement that PICs obtain letters from their trainers stating that the PICs have successfully completed certain training should ensure to the greatest degree possible that crewmembers acting as PICs of fuel-oil transfers get sufficient training to minimize the risks of water pollution.

DATES: *Effective date:* The effective date for the amendments in this rule is July 1, 1998.

Compliance dates:

(1) The compliance date for 33 CFR 155.710(e)(4) is July 1, 1998.

(2) The compliance date for 33 CFR 155.710(e) introductory text, (e)(1), (e)(2), and (e)(3) and § 155.715 is October 1, 1998.

ADDRESSES: Documents, as indicated in this preamble, are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA, 3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Mark C. Gould, Project Manager, Maritime Personnel Qualifications Division, (202) 267–6890 or 1–800–842–8740, extension 7–6890.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 18, 1980, the Coast Guard published two Notices of Proposed Rulemaking (NPRMs): CGD 79–116, which proposed rules for tankermen [45 FR 83290]; and CGD 79–116a, which proposed rules for Persons in Charge (PIC) of transfers of oil [45 FR 83268].

On October 17, 1989, the Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM), entitled, ''Tankerman Requirements and Qualifications for Persons-in-Charge of Dangerous Liquid and Liquefied Gas Transfer Operations'' [54 FR 42624], which combined the original two rulemakings and officially closed CGD 79–116a as a distinct rulemaking. The Coast Guard received 42 comments on that SNPRM. No public meeting was requested, nor was one held.

On April 4, 1995, the Coast Guard published an Interim Rule entitled ''Qualifications for Tankermen and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases'' [60 FR 17134].

On March 26, 1996, the Coast Guard reopened the comment period [61 FR 13098]. No public meeting was requested, nor was one held.

On May 8, 1997, the Coast Guard published a Final Rule entitled ''Qualifications for Tankermen and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases'' [62 FR 25115].

On September 17, 1997, the Coast Guard published a request for comments to that portion of the Final Rule concerning the qualifications for a PIC of transfer of fuel oil [62 FR 48769]. This request for comments also delayed the compliance date until July 1, 1998, for 33 CFR 155.710 (e) introductory text and paragraphs (e)(1), (e)(2), and (e)(3). Several comments requested a public meeting, but none was held. This regulatory project has been in preparation since 1979. During the nineteen years of preparation, the Coast Guard requested comments on the proposed rule no fewer than five times. In the last request for comments, the focus was on a very narrow section of the entire rule-qualification requirements for PICs of transfers of fuel oil. The Coast Guard felt that all sides of this debate could be adequately covered in writing; therefore, no public hearing was necessary.

Background and Purpose

In the Interim Rule [60 FR 17134 (April 4, 1995)], § 155.710(e) of title 33, Code of Federal Regulations (CFR), which sets out requirements for Tankermen-PICs, was written ambiguously. If interpreted literally, the section stated that, on an uninspected vessel required to have a licensed person aboard, either (a) the PIC of a transfer of fuel oil must hold a license authorizing service as master, mate, engineer, or operator aboard that vessel, or (b) that person must have been instructed by the operator or agent of the vessel both in his or her duties and in the Federal statutes and regulations on water pollution that apply to the vessel.

In the Final Rule [62 FR 25115 (May 8, 1997)], the Coast Guard corrected this ambiguity by revising the section. The Final Rule required that, onboard one of these same uninspected vessels, the PIC of a transfer of fuel oil hold either (a) a license authorizing service as master, mate, engineer, or operator aboard that vessel, or (b) a merchant mariner's document (MMD) endorsed as Tankerman-PIC.

Before this clarification, the Captains of the Port (COTPs) in some ports, particularly deepwater, were already interpreting the section in this way. However, in other ports, particularly inland and river, the COTPs were allowing the industry to comply with either the ambiguous requirements stated in the Interim Rule or the intended requirements stated in the Interim Rule as clarified in the Final Rule.

Many in the inland maritime industry were satisfied with the wording of the Interim Rule and, not suspecting that the Final Rule would change the qualification requirements, did not submit comments until the Final Rule was published. Many of these comments claimed that the Coast Guard had not provided the opportunity to comment on the revised text of § 155.710(e). As a result, the Coast Guard issued a request for comment on § 155.710(e) and delayed the compliance date for this section except paragraph 4—whose compliance date already was July 1, 1998—until July 1, 1998 [62 FR 48769 (September 17, 1997)].

Discussion of Comments and Changes

The Coast Guard received a total of 96 written comments in response to the

reopened comment period. All of these letters are available for inspection in CGD 79–116 at the address listed under **ADDRESSES.**

Applicability

The Coast Guard received four written comments addressing the applicability of this rule. One of the comments asked whether an Uninspected Towing Vessel (UTV) with a 14,000-gallon fuel capacity would have to comply with this rule if the transfer of fuel oil was always accomplished by a shoreside fueling-company whose trucks have a maximum capacity of 8,000 gallons.

Section 155.700 of title 33 CFR states that, if either vessel has a capacity in excess of 250 barrels (or 10,500 gallons), then 33 CFR 155.710(e) applies.

A second comment questioned whether this rule would apply to Mobile Offshore Drilling Units (MODUs). More specifically, it asked, ''What must the PIC of a transfer of fuel on a MODU hold—a license, an endorsed MMD, or neither?''

That person must hold a license or else hold an MMD endorsed as Tankerman-PIC. 33 CFR Section 155.700 of 33 CFR, the applicability section that covers 33 CFR 155.710(e), applies to each vessel with a capacity of more than 250 barrels of fuel oil, cargo oil, or hazardous materials. Therefore, the PIC of a transfer of fuel oil on a MODU encompassed by 33 CFR 155.710 must comply with 33 CFR 155.710(e)(1); that is, he or she must hold a valid license issued under 46 CFR part 10 authorizing service as a master, mate, pilot, engineer, or operator aboard that vessel, or else hold an MMD endorsed as Tankerman-PIC.

The third comment expressed concern that the Coast Guard had stated that crewmembers of Oil Spill Response Vessels (OSRVs) belong to a category of person eligible to seek restricted Tankerman-PIC endorsements in 46 CFR 13.111, though the Coast Guard Authorization Act of 1996 stated that they are not subject to requirements of tankermen for tank vessels as such.

The Coast Guard disagrees. It agrees that 46 U.S.C. 3702(f) establishes that 46 U.S.C. Chapter 37, and statutes whose applicability is based on 46 U.S.C. Chapter 37, do not apply to an OSRV. However, 46 U.S.C. 3302(a) makes clear that the designation of a vessel as an OSRV does not preclude it from also being considered a tank vessel under other laws and regulations. An OSRV is a tank vessel as defined by 46 U.S.C. 2101(39). 46 U.S.C. 3702(f) only states only that an OSRV will not be subject to regulations promulgated under the authority in 46 U.S.C. Chapter 37. This does not affect the applicability to an OSRV of other regulations for tank vessels, regulations not based on the authority of 46 U.S.C. Chapter 37. The Ports and Waterways Safety Program (33 U.S.C. Chapter 25, 33 U.S.C. 1221 *et. seq.*) and the Water Pollution Prevention and Control Program (33 U.S.C. Chapter 26, 33 U.S.C. 1251 *et. seq.*) also apply to these types of operations conducted by OSRVs. The purposes of Chapter 25 include the protection of the marine environment and natural resources through, among other functions, the regulation of vessel manning. The tankerman requirements for OSRVs are based on these statutes and on 33 CFR part 155. Therefore, under 33 CFR 155.710(a)(3), the PIC of a transfer of liquid cargo in bulk or of cargo-tank cleaning on an OSRV shall hold a Tankerman-PIC endorsement issued under 46 CFR part 13 that authorizes the holder to supervise the transfer of fuel oil, the transfer of liquid cargo in bulk, or cargo-tank cleaning, as appropriate to the product. Note that 46 CFR 13.111(a) discusses the possibility of OSRVs' crewmembers' obtaining a restricted Tankerman-PIC endorsements. Individual companies should ask their Regional Examination Centers (RECs) about establishing training programs and competency requirements unique to their vessels' configurations and operations.

A fourth comment asked whether floating crane rigs or other stevedoring equipment need to comply with this rule.

Again, 33 CFR 155.700, the applicability section that covers 33 CFR 155.710(e), applies to each vessel with a capacity of more than 250 barrels of fuel oil, cargo oil, or hazardous materials. Therefore, the PIC of a transfer of fuel oil on any vessel encompassed by 33 CFR 155.710 must comply with 33 CFR 155.710—either (e)(1), if the vessel is inspected, or (e)(2), if the vessel is uninspected.

Exemptions

One comment asked that this rule continue to exempt those vessels with a fuel-oil capacity of less than 250 barrels.

The Coast Guard agrees and makes no changes to the applicability under 33 CFR 155.700.

Comment Period

Several comments requested that the Coast Guard hold public meetings before making a final decision on such an important issue.

The Coast Guard declines. The public has received more than adequate opportunity to submit comments or ask questions on this issue.

General Comments

The comments received did not surprise the Coast Guard. Comments from deepwater ports generally tended to favor the stricter interpretation, since many uninspected vessels in those ports each already carry several licensed persons aboard, as well as unlicensed crewmembers documented as Tankermen-PICs. On the other hand, comments from inland and river ports, where vessels usually each carry only one licensed person onboard, generally tended to favor the wording of the Interim Rule.

Two of the comments shared the opinion that the Coast Guard should require the PIC to hold a valid MMD. One of these two recommended that the PIC receive his or her vessel-specific training from the master of the UTV or other licensed officer.

The Coast Guard disagrees. For previously mentioned reasons, and because of the expense applicants would incur to complete the required training, PICs on UTVs need not obtain MMDs.

Another comment stated that most spills caused by the human factor are the result of attitude rather than ability. The PIC knows how to do the job; he or she simply fails to execute.

The Coast Guard does not know whether this is true; however, the first step is to require some minimal amount of training to maximize the chances of a safe transfer of fuel oil. Besides, training can improve attitude along with ability.

A recommendation in one comment stated that the Coast Guard needs to understand the unique operating and regulatory environment of the brown-water maritime fleet.

The Coast Guard agrees, and has gone to extraordinary lengths to include the inland and river marine industry in this rulemaking. In fact, it was mostly comments from the brown-water fleet of UTVs that led the Coast Guard to the final amendments in this reconstitution of the Final Rule.

The Coast Guard received eleven comments agreeing with the wording as it appeared in the Final Rule [62 FR 25115 (May 8, 1997)]. These comments stated that requiring a license or an MMD for transfers of fuel oil on UTVs is good marine practice. One of the eleven stated that the rule should require that the PIC of such transfers hold either a license or an MMD.

Upon reviewing the public comments, the Coast Guard now disagrees. Because it lacks firm statistical evidence that transfers of fuel oil contribute to the amount of pollution from UTVs, the

Coast Guard lacks adequate reason to require a license or an MMD with Tankerman-PIC endorsement.

Most comments agreed that the Coast Guard should require PICs of transfers of fuel oil to obtain instruction by the operators or agents of their vessels, both in their duties and in the Federal statutes and regulations on water pollution that apply to their vessels. These comments presented the following persuasive arguments:

Statistics

Many of the comments stated there are currently no statistics to prove that spills from transfers of fuel oil contribute significantly to the pollution of the marine environment.

Although the Coast Guard speculates, and has heard from reliable sources off the record, that mid-stream transfers contribute significantly to pollution of rivers, there are currently no supporting statistics. However, the Coast Guard recently instituted new data-gathering systems that in time will provide statistics one way or the other.

Further, many of the comments stated that, factually, there are no data to show that a reduction in oil spills would occur if the PIC of a UTV transfer of fuel oil were required to hold a license or MMD and that, therefore, no such requirement would be appropriate.

The Coast Guard agrees and, again, has dropped the requirement.

Training

Several comments stated that the key to the safe transfer of fuel oil to UTVs is training. They suggested that the Coast Guard and industry jointly develop and adopt a training program that specifically addresses transfers.

The Coast Guard agrees—in part. For now, the new requirement for a letter of training from the operator or agent of a vessel will satisfy the training requirements. However, if it later turns out that this training is not having the desired effect, the Coast Guard will ask the industry to help it develop and adopt more formal training.

Several comments felt that simple possession of a license does not endow an Operator of Uninspected Towing Vessels (OUTV) with sufficient knowledge of transfers of fuel oil. In addition, the OUTV often is not physically present where the transfer takes place. Therefore, it is unfair to make the OUTV legally responsible for the transfer.

The Coast Guard agrees. The person legally responsible for the transfer of fuel oil to the UTV, if not from the barge, is the PIC aboard the UTV.

Five comments recommended that the Coast Guard create a new UTV license that specifically certifies an individual for transfers of fuel oil. The industry and Coast Guard would jointly develop qualifications and training procedures for this license.

Currently, the Coast Guard disagrees. For now, a letter of training from the operator or agent of a vessel will satisfy the training requirements. However, if it later turns out that this training is not having the desired effect, the Coast Guard will consider strengthening the requirements in a further rulemaking.

Courses in Firefighting

Four of the comments addressed the requirements for the successful completion of approved courses in firefighting. The comments stated that these courses do not apply to operations on UTVs.

The Coast Guard agrees that most existing, approved courses in firefighting contain more-detailed training than personnel aboard UTVs need. However, the Coast Guard no longer requires approved courses in firefighting for PICs of uninspected vessels involved in transfers of fuel oil. The Coast Guard remains willing, should the need arise, to work with industry in designing the proper curriculum for a course in firefighting applicable to UTVs.

Training in Preventing Pollution

Some of the comments stated that significant training in preventing pollution is not now required to obtain a license as OUTV. Therefore, mere possession of a license, as required in the Final Rule, will not ensure that a transfer of fuel oil is safely conducted.

The Coast Guard agrees that there is insufficient stress put on environmental protection to ensure that the bare fact of holding an OUTV license marks a PIC as sufficiently trained in preventing water pollution.

A letter from the operator or agent of a vessel, stating that the PIC has been instructed both in his or her duties and in the Federal statutes and regulations on water pollution that apply to the vessel, will satisfy the training requirements.

Voluntary Industry Standards

Several of the comments mentioned the existence of voluntary industry standards. They stated that the American Waterways Operators (AWO) carries out a Responsible Carrier Program with the Coast Guard. Many of the comments urged that this Program, as well as other voluntary industry initiatives, should improve marine safety and environmental protection without this new rule.

The Coast Guard agrees that the Responsible Carrier Program is indeed an exemplary initiative for volunteer companies to help reduce pollution and improve marine safety. However, the volunteer companies participating in the various initiatives are not, nor have they ever been, the companies with which the Coast Guard is concerned. The Coast Guard is concerned with companies that do not belong to any of these initiatives. What incentive do they have to implement new programs to help improve marine safety and reduce pollution? Therefore, the new requirement, for an operator or agent of a vessel to sign a letter stating that the crewmember acting as PIC in a transfer of fuel oil has received the proper training, significantly increases the chances that the training has, in fact, been conducted. Only time will tell the significance of the impact these voluntary initiatives will have on marine safety and environmental protection.

In addition, the Coast Guard received one comment stating that the towing industry has chosen to turn its back on this issue in the past because it carries unlicensed engineers on its UTVs.

The Coast Guard partially agrees. However, with AWO's Responsible Carrier Program and similar initiatives now in place, the Coast Guard feels that the industry is trying to address the problem without added regulation.

Regional Examination Centers

Two comments stated that RECs of the Coast Guard are already inundated with licensing and documentation. The advent of the estimated 3,000–4,000 applicants required to obtain the MMD endorsed as Tankerman-PIC would place the RECs in an untenable position.

The Coast Guard recognized that the initial impact on the RECs would have been significant. That is why the plan staggered the date of compliance to correspond with renewal of MMDs, normally accomplished every 5 years. This Final Rule renders this issue irrelevant: It lifts the burden from the RECs and, to some extent, from the mariners while it shifts it in kind though not in amount for the operators and agents.

Cost

Several comments felt that the cost of hiring a licensed tankerman for each transfer of fuel oil to a UTV would be staggering.

The Coast Guard disagrees, but the point is moot. No vessel will have to hire a licensed tankerman for each

transfer, or to incur fees transfer by transfer. The PIC of each transfer will be an onboard crewmember who has received in-house training from the vessel's operator or agent.

Use of Other Trained Personnel on a Vessel

Two comments recommended that the expertise of a driver required to hold a commercial driver's license at the shoreside fueling-company suffice for a transfer of fuel oil to a UTV.

The Coast Guard disagrees. The PIC onboard the UTV must have some minimal training to ensure that he or she is aware of the rules peculiar to the vessel and of the law that governs the prevention of pollution.

Another comment stated that the Tankerman-PIC onboard the barge supplying the fuel oil should be responsible for the entire transfer to the UTV.

The Coast Guard disagrees. The PIC on the barge is, in all probability, unfamiliar with the loading characteristics of the receiving UTV. The PIC onboard the UTV must have some minimal training to ensure that he or she is aware of the rules for the vessel and of the laws that govern the prevention of pollution.

Many of the comments recommended that companies, rather than their PICs aboard UTVs, be responsible for the safe completion of transfers of fuel oil to the UTVs.

The Coast Guard agrees in part. Each company is responsible for the proper training of its PICs and is accountable to its underwriters and the law for unsafe practices. However, the PIC is the logical person to be responsible for the safe completion of a transfer of fuel oil to the UTV.

One comment asked whether the Tankerman-PIC on the fueling barge bears any responsibility for ensuring compliance by the UTV. The PIC on the barge is responsible for satisfying requirements for the safe transfer of fuel oil from the barge, though not to the vessel. The PIC on the UTV is responsible for satisfying them for the safe transfer of it to the UTV, though not from the barge. Several comments stated that possession of a license or MMD will not ensure that the transfer of fuel oil to a UTV is conducted safely. Therefore, they could not understand the logic behind the insistence by the Coast Guard that the requirement is ''good marine practice.''

The Coast Guard now agrees. A letter from the operator or agent of a vessel, stating that the PIC has been instructed both in his or her duties and in the Federal statutes and regulations on water pollution that apply to the vessel, will satisfy the training requirements.

One comment stated that the most appropriate option might be to require the PIC on a UTV to obtain a restricted Tankerman-PIC (Barge) endorsement.

The Coast Guard disagrees. The PIC on a UTV must have received training peculiar to his or her UTV to minimize the chances of a polluting spill. The transfer procedures on a tank barge may be vastly different from those on any UTV.

Inapplicable Comments

Six comments suggested that in-house training is sufficient for the safe loading and unloading of chemical barges dockside. The loading or unloading of chemical cargo is not the subject of this request for comments. The Coast Guard will answer these comments by letter.

The Coast Guard will also answer by letter another comment, which asked about the applicability of the Final Rule to vessels loading or unloading chlorine. Qualifications for persons loading and unloading chemical cargoes are not the subject of this request for comments.

One comment stateds that the Coast Guard should exempt or grandfather from the rules those who can show prior experience in loading and unloading cargo.

The loading and unloading of cargo (other than fuel oil) by Tankerman-PICs are not proper subjects of this comment period. The Coast Guard will answer this comment by letter, too.

Although the Coast Guard will allow those who wish to act as PICs of transfers of fuel oil to so act after obtaining instruction by the operators or agents of their vessels both in their duties and in the Federal statutes and regulations on water pollution that apply to the vessels, it is still concerned that some may not receive the proper training necessary to minimize the chances of water pollution.

Therefore, after receiving proper instruction from the operator or agent of a vessel, each trainee will have to receive a letter of instruction. The letter must come from the party providing the training. The training need occur only once, unless there is some unique characteristic about a particular vessel that would necessitate later, vessel-specific training. No person changing his or her place of employment need retake the training, unless there is something unique about the new vessel. The letter of instruction must stay either with the person, on the vessel, or in the office of the operator or agent of the vessel. It must be readily available to Coast Guard boarding officers.

Collection of Information

This reconstitution of a final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As defined in 5 CFR 1320.3(c), ''collection of information'' includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions.

The information collections associated with this rule concern the letter of instruction described in 33 CFR §§ 155.710(e)(2) and 155.715. The Coast Guard sought authority for the collection from the OMB, asking emergency processing of the request for authority by July 15, 1998. The title and description of the collection, a description of the respondents, and an estimate of the total annual burden follow. The new request has been submitted and is pending approval. A copy of the request is available for review in the docket.

The Coast Guard estimates that the letter of instruction will impose an annual burden of 153 hours' information collection. The burden comprises all time for both gathering and maintaining the information.

Title: Letter of Instruction for Persons -In-Charge (PICs) on Uninspected Vessels.

Summary of the Collection of Information: This Final Rule contains collection-of-information requirements in 33 CFR 155.710(e)(2) and 155.715.

Need for Information: The U. S. Coast Guard administers and enforces the laws and regulations promoting the safety of life and property in marine transportation. It establishes Standards of training for mariners to ensure their ability to safely and adequately carry out duties and responsibilities that promote safety on vessels. To ensure that training standards are complied with, each PIC on an uninspected vessel must carry a letter of instruction. The letter's contents should verify the PIC's credentials, stating that the holder has received sufficient formal instruction from the owner, operator, or agent of the vessel, as required by 33 CFR 155.710(e)(2).

Proposed Use of Information: Carriage of a letter of instruction will verify the credentials of the PIC, and expedite verification of compliance by the Captain of the Port (COTP).

Description of the Respondents: Respondents include the operator, agent, or PIC involved in a transfer described in 33 CFR 155.700.

Number of Respondents: According to data from the Coast Guard Marine Safety Management System, there are approximately 1380 vessels that are

classified as uninspected vessels and are required to have PICs for transfers. The total population count [2760] represents the number of vessels [1380] multiplied by the number of PICs aperper vessel [2].

Frequency of Response: The Coast Guard expects that each PIC will receive the recognized training once.

Burden of Response: 10 minutes annually per respondent.

Estimated Total Annual Burden: An annual burden of 153 hours' information collection.

Persons submitting comments on the collection of information should submit the comments both to OMB and to the Coast Guard where indicated under ADDRESSES by the date under **DATES**.

No person need to respond to a request for collection of information unless it displays a currently valid control number from OMB.

List of Subjects in 33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 155 as follows:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; Sec. 2, E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and sections 155.1110 and 155.1150 also issued under 33 U.S.C. 2735.

2. Revise paragraphs (e) introductory text, (e)(1), (2) and (e)(3) of § 155.710 to read as follows:

§ 155.710 Qualifications of person in charge.

* * * * *

(e) The operator or agent of each vessel to which this section applies shall verify to his or her satisfaction that the PIC of any transfer of fuel oil requiring a Declaration of Inspection—

(1) On each inspected vessel required by 46 CFR chapter I to have a licensed person aboard, holds a valid license issued under 46 CFR part 10 authorizing service as a master, mate, pilot, engineer, or operator aboard that vessel, or holds a valid merchant mariner's document endorsed as Tankerman-PIC;

(2) On each uninspected vessel, either complies with the requirements of paragraph (e)(1) of this section or carries a letter satisfying the requirements of § 155.715 and designating him or her as a PIC, unless equivalent evidence is immediately available aboard the vessel or at his or her place of employment.

(3) On each tank barge, for its own engine-driven pumps, either complies with paragraph (e)(1) or (2) of this section or has been instructed by the operator or agent of the vessel both in his or her duties and in the Federal statutes and regulations on water pollution that apply to the vessel; or

* * * * *

3. Add a new § 155.715 to read as follows:

§ 155.715 Contents of letter of designation as a person-in-charge of the transfer of fuel oil.

The letter of instruction required in § 155.710(e)(2) must designate the holder as a person-in-charge of the transfer of fuel oil and state that the holder has received sufficient formal instruction from the operator or agent of the vessel to ensure his or her ability to safely and adequately carry out the duties and responsibilities of the PIC described in 33 CFR 156.120 and 156.150.

Dated: June 23, 1998.

J. P. High,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–17267 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–14–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

36 CFR Part 327

Shoreline Use Permits, Flotation

AGENCY: U.S. Army Corps of Engineers.

ACTION: Final rule.

SUMMARY: An amendment to Appendix A section 327.30 ''Guidelines for Granting Shoreline Use Permits'' was part of a proposed rule published in the **Federal Register** on April 15, 1997. The language in this amendment reduced the burdensome requirements on individuals who have requested waivers because of limiting health conditions. The amendment gives Operations Managers the flexibility to take special circumstances of the applicant into consideration when issuing a shoreline use permit. This amendment is also in this final rule.

The U.S. Army Corps of Engineers also published a proposed rule in the April 15, 1997, issue of the **Federal Register**, to amend Appendix C of Section 327.30. The amendment concerned flotation materials to be used on all new docks and boat mooring buoys. Comments received during the 45-day comment period prompted the Corps to conduct further studies and withdraw the proposed rule to amend Appendix C issued on April 15, 1997. Subsequently, a replacement rule was published in the **Federal Register** on December 4, 1997. Comments were accepted on this proposed revision until January 20, 1998. This final rule reflects the comments received. We believe that the changes will substantially increase the safety of project visitors and the protection of the natural resources.

EFFECTIVE DATE: August 17, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis, (202) 761–0247.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Army Corps of Engineers published a final rule providing policy and guidance on the management of shorelines of Corps managed Civil Works projects in the **Federal Register** on July 27, 1990 (55 FR 30690–30702), last amended in the **Federal Register** on July 1, 1992 (57 FR 29219–29220).

Two amendments to the regulations were published as a proposed rule in the **Federal Register** on April 15, 1997 (62 FR 18307–18308). An amendment to Paragraph 2.c.(9) of Appendix A, Section 327.30, Guidelines for Granting Shoreline Use Permits, gave Operations Managers the flexibility to take special circumstances of the applicant into consideration when issuing a permit. This language reflected the Corps desire to accommodate basic access for those individuals who have requested waivers because of limiting health conditions that are either obvious or substantiated by a doctor's certification. No negative comments were received regarding this amendment during the comment period.

Paragraph 14, Appendix C, of Section 327.30, also published as a proposed rule on April 15, 1997, reflected the Corps amended flotation requirements for all new docks and boat mooring facilities. The Corps received 28 letters concerning flotation during the comment period of this proposed rulemaking. The comments prompted the Corps to conduct further studies and give additional consideration to flotation requirements. Accordingly, the flotation portion of the proposed rule published on April 15, 1997, was withdrawn and was subsequently

replaced by a new proposed rule published in the **Federal Register** on December 4, 1997. Twelve comments were received on the new proposed rule change and are summarized below.

Discussion of Public Comments and Changes

I. Definition of terms

Many of the comments received asked for specific definitions as they relate to the final rule. Those definitions are as follows:

1. *Waterlogged*—This term means saturated with water to the point of sogginess or loss of buoyancy. Although all floatation materials absorb water to some degree (unless they are completely encased), they do not all lose buoyancy and become waterlogged at the same rate. Flotation that is not watertight will become progressively heavier and more waterlogged over time. At some point, these floats no longer meet the specifications for flotation as originally designed. Floats with air as a flotation media become waterlogged as soon as they are punctured or cracked, sinking almost immediately after enough chambers are penetrated.

2. *Crack, peel, fragment*—These terms refer to plastic, fiberglass, or concrete encasements or coatings. Some of these encasements may contain hairline cracks. Although these small cracks (and some larger ones) do not affect the structural integrity of the float if it is filled with good foam, some encasements have more than one gap or opening. Once filled with water, these cracks can expand and allow beads to enter the water. In the case of peeling and fragmenting, the same situation occurs when a portion of the encasement becomes dislodged and allows for the entrance of beads or other flotation material into the water.

3. *Resistant to puncture and penetration*—This phrase means that the float or its flotation will withstand the intended use under ordinary circumstances. Because waves cause floats to rise and fall along the shoreline, these floats are expected to withstand the daily beating from waves, submerged obstacles such as small rocks or snags in the area, daily bumps of boats or other recreational vessels, as well the normal extremes in weather conditions encountered in the area.

When dealing primarily with floats that use air chambers as the means of flotation, these floats take on water and sink when enough chambers are punctured or penetrated. When dealing with floats using bead flotation, punctures and other forms of penetration could allow the beads to escape into the water and then allow water to enter the encasement, eventually causing failure of the float.

4. *Damage by animals*—Animals and/or waterfowl sometimes burrow into beaded or foam flotation materials to escape the weather or for nesting. Any flotation material should be encased with material that is strong enough and thick enough to prevent intrusion by animals under normal circumstances.

5. *Fire resistant*—This term means able to resist fire and not readily combustible. It does not mean ''fire proof''. Flotation that is fire resistant must not be made of materials that will heighten or intensify an existing fire.

6. *Severely deteriorated and no longer serviceable*—This phrase means that there is significant damage to the float or its flotation (including taking on excess water or releasing beads), the float or its flotation no longer performs its designated function, or the float or its flotation fails to meet the specifications for which it was originally warranted. In addition, ''no longer serviceable'' means the float or its flotation material can no longer be repaired so that it performs its designated function or it fails to meet the specifications for which is was originally warranted.

7. *No longer performing its designated function*—This means that a float no longer can be used for its originally intended purpose as a result of damage or deterioration or that the float cannot be used without creating safety hazards for the recreating public.

8. *Marine use*—This term means that use which is related to navigation or water-based activities.

II. Use of Drums or Barrels

Objections were received to eliminating recycled 55-gallon drums, either metal or plastic, as floats. Some respondents stated that if these containers could not be recycled and used as floats, proper disposal was difficult. Others objected because of the cost involved with obtaining other types of floats. Another comment stated that if barrels did become punctured, they were easily replaced with new ones.

There are many problems associated with the use of drums, barrels, or other containers. One of the major problems is that these items can be punctured or cracked through ordinary use. Not all drums or barrels are manufactured to universally agreed-upon standard specifications. Once the integrity of the drum or barrel has been compromised, any remaining contents left in them will mix with water and be disseminated in the area, spreading possible contamination.

Secondly, 55-gallon drums easily break away from docks. Because drums cannot be through-bolted to the dock they normally float in the water under the dock sometimes within a supporting confinement structure. When these barrels become partially filled with water, they float at or just below the water surface and sometimes come out from within the confinement structure. As a result, these drums float free and are a hazard to boaters, water skiers, and other recreational users.

Lastly, when the drums do partially fill with water and sink, they can cause considerable damage to dam mechanisms, water intakes, pipelines, and other water control structures. Even if these drums are filled with polyurethane foam, they can still break loose and may sink or partially sink as a result of the water's displacement of the air within the voids.

Several comments asked for the use of tires as a form of encasement. The problem with tires is not their composition; instead, the problem is how they truly function as encasements. If the exposed extruded polystyrene portion of the flotation must be further encased by plywood or some other material, there are several problems that must be addressed. Any misshaping of the tire could result in a ''non-contact'' spot which would allow the entrance of water, thus altering the buoyancy of the float. If the plywood encasements are through-bolted, cracks in the wood around the bolts may occur which, again, could decrease the performance of the float. In addition, the wood around the bolts is more susceptible to rot, thus affecting the integrity of the float.

III. Specific Standards

Some comments indicated that the standards, as written, were not specific enough and that subjective requirements should be avoided. The standards were written to provide a framework for identifying measurable outcomes, focusing on results achieved rather than on strict specifications. Exact standards for thickness and density were not included for this reason. To include such restrictions would make the standards more limiting than necessary. As technologies advance and new and better forms of floats and flotation material are formulated, it may be unnecessary to meet such strict guidelines set by using today's technology.

IV. Open bead polystyrene

Several comments were received stating that if the Corps intends to not allow any flotation material made of

unprotected open bead polystyrene products, such a statement should be made outright in the new standards. Again, the standards were written to provide a framework for identifying measurable outcomes. If unprotected open bead polystyrene does not meet the standards as written, it cannot be allowed as flotation. Whether it is mentioned specifically in the standards or not is irrelevant.

V. Fire Resistance

Several comments were received regarding the fire resistance requirements for floats and flotation. One stated that although some encasements, such as wood and plywood, support combustion, most encasements are not known to feed fires. In fact, most fires start on boats and spread to the docks.

The purpose of the ''fire resistant'' statement is to ensure that the encasement or its flotation material is not constructed of a material that would heighten or intensify an existing fire. This requirement does not mean ''fire proof'' or ''non-combustible.'' In addition, the float and its flotation material must be resistant to combustion when either comes in direct contact with petroleum products.

Procedural Requirements

Executive Order (E.O.) 12866

The Secretary of the Army has determined that this final rule is not a ''major'' rule within the meanng of Executive Order (E.O.) 12866. This final rule will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprise in domestic or export markets.

Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Collection of Information

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

Executive Order 12612

The Corps has analyzed this final rule under principles and criteria in E.O. 12612 and has determined that this final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The Corps has determined that this final rule does not have ''significant'' taking implications. The final rule does not pertain to taking of private property interests, nor does it impact private property.

NEPA Statement

The Corps has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

The final rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

List of Subjects in 36 CFR Part 327

Public lands, Shoreline management.

For the reasons set forth in the preamble, 36 CFR part 327, is amended as follows:

36 CFR PART 327, RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCE DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

1. The authority citation for 36 CFR part 327 continues to read as follows:

Authority: 16 U.S.C. 460d and 460*l*–6a.

2. Appendix A to § 327.30 is amended by revising paragraph 2c(9) as follows:

Appendix A to § 327.30—Guidelines for Granting Shoreline Use Permits

* * * * *

2. * * *

c. * * *

(9) The district commander or his/her authorized representative may place special conditions on the permit when deemed necessary. Requests for waivers of shoreline management plan permit conditions based on health conditions will be reviewed on a case by case basis by the Operations Manager. Efforts will be made to reduce onerous requirements when a limiting health condition is obvious or when an applicant provides a doctor's certification of need for conditions which are not obvious.

* * * * *

3. Appendix C to § 327.30 is amended by revising paragraph 14, to read as follows:

Appendix C to § 327.30—Shoreline Use Permit Conditions

* * * * * *

14. Floats and the flotation material for all docks and boat mooring buoys shall be fabricated of materials manufactured for marine use. The float and its flotation material shall be 100% warranted for a minimum of 8 years against sinking, becoming waterlogged, cracking, peeling, fragmenting, or losing beads. All floats shall resist puncture and penetration and shall not be subject to damage by animals under normal conditions for the area. All floats and the flotation material used in them shall be fire resistant. Any float which is within 40 feet of a line carrying fuel shall be 100% impervious to water and fuel. The use of new or recycled plastic or metal drums or non-compartmentalized air containers for encasement or floats is prohibited. Existing floats are authorized until it or its flotation material is no longer serviceable, at which time it shall be replaced with a float that meets the conditions listed above. For any floats installed after the effective date of this specification, repair or replacement shall be required when it or its flotation material no longer performs its designated function or it fails to meet the specifications for which it was originally warranted.

* * * * * *

Dated: June 23, 1998.

Robert W. Burkhardt,

Colonel, Corps of Engineers, Executive Director or Civil Works.

[FR Doc. 98–17396 Filed 6–30–98; 8:45 am]

BILLING CODE 3710–92–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220, 1222, 1228, 1230, 1234, and 1238

RIN 3095–AA85

Technical Amendments to Records Management Regulations

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule; technical amendments.

SUMMARY: NARA is updating organizational titles and addresses in 36 CFR ch. XII, subchapter B, to reflect the current organizations that perform the functions. Since the regulations in 36 CFR ch. XII, subchapter B, were last revised, NARA has reorganized and renamed the offices that have records management responsibilities. Additionally, the offices have been relocated to the Archives II facility in College Park. Updating the titles and addresses will facilitate agency and public correspondence with NARA.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at (301) 713–7360, extension 226.

SUPPLEMENTARY INFORMATION: This rule is being issued as a final rule without prior notice of proposed rulemaking because under 5 U.S.C. 553 (b)(3)(A) it is exempt from notice-and-comment procedure as it solely concerns matters relating to internal agency organization. NARA finds good cause to issue this rule with an immediate effective date under 5 U.S.C. 553(d)(3) because it is a nonsubstantive rule that only updates organizational titles and addresses.

This rule is not a significant regulatory action for the purposes of Executive Order 12866, and has not been reviewed by OMB. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

For the reasons set forth in the preamble, and under the authority of 44 U.S.C. 2104, NARA is amending chapter XII of title 36, Code of Federal Regulations, as follows:

PART 1220—FEDERAL RECORDS; GENERAL

1. In the following table, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add in its place
1220.40	Office of Records Administration, National Archives (NIA), Washington, DC 20408.	NARA, Life Cycle Management Division (NWML), 8601 Adelphi Rd., College Park, MD 20740–6001
1220.40	Office of Records Administration	Life Cycle Management Division
1220.54	Assistant Archivist for Records Administration	Director, Life Cycle Management Division

PART 1222—CREATION AND MAINTENANCE OF FEDERAL RECORDS

2. In § 1222.20(b)(3), remove the words ''NARA (NI)'' , and add in their place ''NARA (NWML)''.

PART 1228—DISPOSITION OF FEDERAL RECORDS

3. In the following table, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add in its place
1228.26	NARA (NIR)	NARA (NWML)
1228.46	NARA (NI)	NARA (NWM)
1228.50	(NIR)	(NWML)
1228.54	National Archives and Records Administration (NIR)	National Archives and Records Administration (NWML)
1228.54	NARA (NIR), Washington, DC 20408	NARA (NWML), 8601 Adelphi Rd., College Park, MD 20740–6001
1228.54	Office of Federal Records Centers (NC)	Office of Regional Records Services (NR)
1228.60	NARA (NIR), Washington, DC 20408	NARA (NWML), 8601 Adelphi Rd., College Park, MD 20740–6001
1228.74	NARA (NIR), Washington, DC 20408	NARA (NWML), 8601 Adelphi Rd., College Park, MD 20740–6001
1228.78	NARA (NIR)	NARA (NWML)
1228.92	NARA (NIR)	NARA (NWML)
1228.92	NARA (NIR), Washington, DC 20408	NARA (NWML), 8601 Adelphi Rd., College Park, MD 20740–6001
1228.94	NARA (NIR)	NARA (NWML)
1228.104	NARA (NIR) Washington, DC 20408	NARA (NWML), 8601 Adelphi Rd., College Park, MD 20740–6001
1228.124	National Archives (NIR)	NARA (NWML)
1228.152	National Archives (NC), Washington, DC 20408	NARA (NR), 8601 Adelphi Rd., College Park, MD 20740–6001
1228.154	Assistant Archivist for Federal Records Centers, National Archives and Records Administration (NC), Washington, DC 20408.	Assistant Archivist for Regional Records Services, NARA (NR), 8601 Adelphi Rd., College Park, MD 20740–6001
1228.154	Records Appraisal and Disposition Division (NIR)	Life Cycle Management Division (NWML)
1228.156	National Archives (NC), Washington, DC 20408	NARA (NR), 8601 Adelphi Rd., College Park, MD 20740–6001
1228.190	Office of the National Archives (NN)	Office of Records Services—Washington, DC (MWMD)
1228.190	Regional Archives	Regional Records Services Facility
1228.222(a)(3)	National Archives (NC), Washington, DC 20408	NARA (NR), 8601 Adelphi Rd., College Park, MD 20740–6001
1228.224	Office of Federal Records Centers (NC), National Archives, Washington, DC 20408.	Office of Regional Records Services (NR), NARA, 8601 Adelphi Rd., College Park, MD 20470–6001

PART 1230—MICROGRAPHIC RECORDS MANAGEMENT

4. In the following table, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add in its place
1230.7	(NI), Washington, DC 20408	(NWM), 8601 Adelphi Rd., College Park, MD 20740–6001

Section	Remove	Add in its place
1230.50	Office of Federal Records Centers, National Archives (NC), Washington, DC 20408.	Office of Regional Records Services (NR), 8601 Adelphi Rd., College Park, MD 20740–6001

PART 1234—ELECTRONIC RECORDS MANAGEMENT

5. In § 1234.10(a), remove the words ''Office of Records Administration (NI), Washington, DC 20408'', and add in their place the words ''Modern Records Programs (NWM), 8601 Adelphi Rd., College Park, MD 20740–6001''.

PART 1238—PROGRAM ASSISTANCE

6. In § 1238.2, remove the words ''Agency Services Division, Office of Records Administration, National Archives (NIA), Washington, DC 20408'' and add in their place the words ''NARA Life Cycle Management Division (NWML), 8601 Adelphi Rd., College Park, MD 20740–6001''.

7. Also in § 1238.2, remove the words ''director of the appropriate Federal records center regarding records in or scheduled for transfer to the records center, or the director of the appropriate regional archives regarding records in or scheduled for transfer to the regional archives'' and add in their place the words ''appropriate Regional Administrator regarding records in or scheduled for transfer to the records center and/or the archival operations within the region''.

Dated: June 25, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–17462 Filed 6–30–98; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AF85

Veterans Education: Suspension and Discontinuance of Payments

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document makes changes to the Department of Veterans Affairs (VA) education regulations. It requires that a Director of a VA field station obtain recommendations from a Committee on Educational Allowances before deciding whether to suspend or discontinue payments of educational assistance when educational institutions (including training establishments) fail to meet requirements. It also establishes procedural and composition requirements for the Committees, and it establishes hearing rules for the Committees. In addition, it provides that upon the request of the affected educational institution, the Director of the Education Service will determine, on the basis of the evidence of record, appeals of a decision concerning such suspension or discontinuance of payments of educational assistance. The changes apply to the following educational assistance programs: Montgomery GI Bill—Active Duty, Montgomery GI Bill—Selected Reserve, Survivors' and Dependents' Educational Assistance, the Post-Vietnam Era Veterans' Educational Assistance Program, and the Educational Assistance Pilot Program. The changes are appropriate to ensure proper decisionmaking. In addition, nonsubstantive changes are made for the purpose of clarification.

DATES: Effective Date: July 31, 1998.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, (202) 273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 28, 1997 (62 FR 45596), VA, the Department of Defense, and the Department of Transportation (Coast Guard) proposed to amend the ''Administration of Educational Assistance Programs'' regulations which are set forth at 38 CFR 21.4001 et seq. It was proposed to make changes to the regulations concerning suspension or discontinuance of payments of educational assistance when educational institutions (including training establishments) fail to meet requirements to report certain occurrences concerning the enrollments of individuals in the following educational assistance programs: Montgomery GI Bill—Active Duty, Montgomery GI Bill—Selected Reserve, Survivors' and Dependents' Educational Assistance, the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP), and the Educational Assistance Pilot Program.

Interested persons were given 60 days to submit comments. One comment was received from the National Association of State Approving Agencies (NASAA).

The provisions of proposed § 21.4210(e) stated, in part:

(e) *Actions that must accompany a mass suspension of educational assistance payments or suspension of approval of enrollments and reenrollments in a course or educational institution.* (1) The Director of the VA facility of jurisdiction may suspend payment of educational assistance and may suspend approval of new enrollments and reenrollments as provided in paragraph (d) of this section, only after:

(i) The Director notifies in writing the State approving agency concerned and the educational institution of any failure to meet the approval requirements and any violation of recordkeeping or reporting requirements; and

(ii) The educational institution—

(A) Refuses to take corrective action; or

(B) Does not take corrective action within 60 days (or 90 days if permitted by the Director).

NASAA suggested that an alternative should be added to avoid a suspension if a State approving agency took action to resolve the failure to meet approval requirements, and a report of the corrective action were made to VA within 30 days of the Director's notification. No changes are made based on this comment. The rule provides for notice to the State approving agency and we would expect the State approving agency to become involved in the matter. However, the provisions of the rule allowing corrective action to be taken within 60 or 90 days would

obviate any need to include an alternative that corrective action be taken within 30 days if taken as a result of prompting from the State approving agency.

Based on the rationale set forth in this document and in the proposed rule, the provisions of the proposed rule are adopted without change except that the final rule corrects a citation in § 21.4008.

The Department of Defense (DOD) and VA are jointly issuing this final rule insofar as it relates to VEAP. This program is funded by DOD and administered by VA. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule insofar as it relates to the Montgomery GI Bill—Selected Reserve program. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this final rule is issued solely by VA.

The Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs, within their respective jurisdictions, hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although it is possible that a small-entity school could be affected by this final rule, the number of individuals affected at the school would in all likelihood be an insignificant portion of the student body. Also, experience has shown that only one or two schools per year will be affected by the provisions of this final rule concerning suspensions and discontinuance of payments. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by this final rule are 64.117, 64.120, and 64.124. There is no Catalog of Federal Domestic Assistance number for the Montgomery GI Bill—Selected Reserve program.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 17, 1998.

Togo D. West, Jr.,

Acting Secretary.

Approved: May 1, 1998.

Normand G. Lezy,

Lieutenant General, USAF, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

Approved: April 24, 1998.

G.F. Woolver,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set out in the preamble, 38 CFR part 21 (subparts D, G, K, and L) is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D is revised to read as follows:

Authority: 10 U.S.C. 2147 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

§ 21.4008 [Amended]

2. Section 21.4008 is amended by removing ''§ 21.4134'', and adding, in its place, ''§ 21.4210''.

§ 21.4133 [Removed]

3. Section 21.4133 is removed.

§ 21.4134 [Removed]

4. Section 21.4134 is removed.

5. In § 21.4135, paragraph (f) is revised; introductory text is added to paragraph (j); paragraph (j)(1) is revised; the heading for paragraph (k) is revised; introductory text is added to paragraph (k); and paragraph (k)(1) is revised, to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(f) *Discontinued by VA (§§ 21.4215, 21.4216).* If VA discontinues payments of educational assistance as provided by §§ 21.4215(d) and 21.4216, the effective date of discontinuance will be as follows:

(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if the discontinuance were preceded by such a suspension.

(2) End of the month in which the decision to discontinue is effective pursuant to § 21.4215(d), if the Director of a VA facility did not suspend payments prior to the discontinuance.

(Authority: 38 U.S.C. 3690)

* * * * *

(j) *Disapproval by State approving agency (§ 21.4259(a)).* If a State approving agency disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if disapproval were preceded by such a suspension.

* * * * *

(k) *Disapproval by Department of Veterans Affairs (§§ 21.4215, 21.4259(c)).* If VA disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

(1) Date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if disapproval were preceded by such a suspension.

* * * * *

§ 21.4146 [Amended]

6. Section 21.4146(e) is amended by removing ''§§ 21.4207 and 21.4202(b)(4)'' and adding, in its place, ''§§ 21.4210(g) and 21.4212''.

§ 21.4152 [Amended]

7. Section 21.4152(b)(2) is amended by removing ''§ 21.4202'' and adding, in its place, ''§ 21.4210(d)''.

§ 21.4202 [Amended]

8. In § 21.4202, paragraphs (a) and (b) are removed and reserved.

§ 21.4207 [Removed]

9. Section 21.4207 is removed.

§ 21.4208 [Removed]

10. Section 21.4208 is removed.

11. Section 21.4210 is added to read as follows:

§ 21.4210 Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.

(a) *Overview.* (1) VA may pay educational assistance to an individual eligible for such assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 35, or 36, only if the individual is pursuing a course approved in accordance with the provisions of 38 U.S.C. chapter 36. In general, courses are approved for this purpose by a State approving agency designated to do so (or by VA in some instances). Notwithstanding such approval, however, VA, as provided in paragraphs (b), (c), and (d) of this

section, may suspend, discontinue, or deny payment of benefits to any or all otherwise eligible individuals for pursuit of courses or training approved under 38 U.S.C. chapter 36.

(2) For the purposes of this section and the purposes of §§ 21.4211 through 21.4216, except as otherwise expressly stated to the contrary—

(i) The term ''course'' includes an apprenticeship or other on-job training program;

(ii) The term ''educational institution'' includes a training establishment; and

(iii) Reference to action suspending, discontinuing, or otherwise denying enrollment or reenrollment means such action with respect to providing educational assistance under the chapters listed in paragraph (a)(1) of this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3452, 3671, 3690)

(b) *Denial of payment in individual cases.* VA may deny payment of educational assistance to a specific individual for pursuit of a course or courses if, following an examination of the individual's case, VA has credible evidence affecting that individual that—

(1) The course fails to meet any of the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 34, 35, or 36; or

(2) The educational institution offering the individual's course has violated any of those requirements of law.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690(b)(1), 3690(b)(2))

(c) *Notice in individual cases.* Except as provided in paragraph (e) of this section, when VA denies payment of educational assistance to an individual under paragraph (b) of this section, VA will provide concurrent written notice to the individual. The notice shall state—

(1) The adverse action;

(2) The reasons for the action; and

(3) The individual's right to an opportunity to be heard thereon in accordance with part 19 of this title.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Actions affecting groups.* (1) The Director of the VA facility of jurisdiction may suspend payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course, and may disapprove all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course. The decision to take such action, except as provided in paragraph (d)(2) of this section, must be based on evidence of a substantial pattern of veterans, servicemembers, reservists, or eligible persons enrolled in the course receiving educational assistance to which they are not entitled because:

(i) One or more of the course approval requirements of 38 U.S.C. chapter 36 are not met, including the course approval requirements specified in §§ 21.4253, 21.4254, 21.4261, 21.4262, 21.4263, and 21.4264; or

(ii) The educational institution offering the course has violated one or more of the recordkeeping or reporting requirements of 10 U.S.C. chapter 1606, or of 38 U.S.C. chapters 30, 32, 34, 35, and 36. These violations may include, but are not limited to, the following:

(A) Willful and knowing submission of false reports or certifications concerning students or courses of education;

(B) Failure to report to VA a veteran's, servicemember's, reservist's, or eligible person's reduction, discontinuance, or termination of education or training; or

(C) Submission of improper or incorrect reports in such number, manner, or period of time as to indicate negligence on its part, including failure to maintain an adequate reporting or recordkeeping system.

(2) The Director also may make a decision to take the action described in paragraph (d)(1) of this section when the Director has evidence that one or more prohibited assignments of benefits have occurred at an educational institution as a result of that educational institution's policy. This decision may be made regardless of whether there is a substantial pattern of erroneous payments at the educational institution. See § 21.4146.

(3) The Director may disapprove the enrollment of all individuals not already enrolled in an educational institution (which for the purposes of this paragraph does not include a training establishment) when the Director finds that the educational institution:

(i) Has charged or received from veterans, servicemembers, reservists, or eligible persons an amount for tuition and fees in excess of the amount similarly circumstanced nonveterans are required to pay for the same course; or

(ii) Has instituted a policy or practice with respect to the payment of tuition, fees, or other charges that substantially denies to veterans, servicemembers, reservists, or eligible persons the benefits of advance payment of educational assistance authorized to such individuals under §§ 21.4138(d), 21.7140(a), and 21.7640(d); or

(iii) Has used erroneous, deceptive, or misleading practices as set forth in § 21.4252(h).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3680A(d), 3684, 3685, 3690, 3696, 5301)

(e) *Actions that must accompany a mass suspension of educational assistance payments or suspension of approval of enrollments and reenrollments in a course or educational institution.* (1) The Director of the VA facility of jurisdiction may suspend payment of educational assistance and may suspend approval of new enrollments and reenrollments as provided in paragraph (d) of this section, only after:

(i) The Director notifies in writing the State approving agency concerned and the educational institution of any failure to meet the approval requirements and any violation of recordkeeping or reporting requirements; and

(ii) The educational institution—

(A) Refuses to take corrective action; or

(B) Does not take corrective action within 60 days (or 90 days if permitted by the Director).

(2) Not less than 30 days before the Director acts to make a mass suspension of payments of educational assistance and/or suspend approval of new enrollments and reenrollments, the Director will, to the maximum extent feasible, provide written notice to each veteran, servicemember, reservist, and eligible person enrolled in the affected courses. The notice will:

(i) State the Director's intent to suspend payments and/or suspend approval of new enrollments and reenrollments unless the educational institution takes corrective action;

(ii) Give the reasons why the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments; and

(iii) State the date on which the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690(b))

(f) *Actions in cases indicating submission of false, misleading, or fraudulent claims or statements.* The Director of the VA facility of jurisdiction will take the following action, as indicated, that may be in addition to suspending payments or further approval of enrollments or reenrollments in a course or educational institution.

(1) If the Director has evidence indicating that an educational institution has willfully submitted a

false or misleading claim, or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim, the Director will make a complete report of the facts of the case to the appropriate State approving agency and to the Office of Inspector General for appropriate action.

(2) If the Director believes that an educational institution has submitted a false, fictitious, or fraudulent claim or written statement within the meaning of the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812) or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim or made such a written statement, the Director will follow the procedures in part 42 of this title.

(Authority: 10 U.S.C. 16136(b); 31 U.S.C. 3801–3812; 38 U.S.C. 3034(a), 3241(a), 3690(d))

(g) *Referral to the Committee on Educational Allowances.* If the Director of the VA facility of jurisdiction suspends payment of educational assistance to, or suspends approval of the enrollment or reenrollment of, individuals in any course or courses as provided in paragraph (d) of this section, the Director will refer the matter to the Committee on Educational Allowances as provided in § 21.4212.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(h) *Withdrawal of referral to Committee on Educational Allowances.* (1) If, following a suspension of payments and/or of approval of enrollments or reenrollments, the Director of the VA facility of jurisdiction determines that the conditions which justified the suspension have been corrected, and the State approving agency has not withdrawn or suspended approval of the course or courses, the Director may resume payments to and/or approval of enrollments or reenrollments of the affected veterans, servicemembers, reservists, or eligible persons. If the case has already been referred to the Committee on Educational Allowances under paragraph (g) of this section at the time such action is taken, the Director will advise the Committee that the original referral is withdrawn.

(2) If, following a referral to the Committee on Educational Allowances, the Director finds that the State approving agency will suspend or withdraw approval, the Director may, if otherwise appropriate, advise the Committee that the original referral is withdrawn.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

12. Section 21.4211 is added to read as follows:

§ 21.4211 Composition, jurisdiction, and duties of Committee on Educational Allowances.

(a) *Authority.* VA is authorized by 38 U.S.C. 3690 to discontinue educational benefits to veterans, servicemembers, reservists, or eligible persons when VA finds that the program of education or course in which such individuals are enrolled fails to meet any of the requirements of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part, or when VA finds an educational institution or training establishment has violated any such statute or regulation, or fails to meet any such statutory or regulatory requirement. Sections 21.4210 and 21.4216 implement that authority. This section provides for establishment of a Committee on Educational Allowances within each VA facility of jurisdiction whose findings of fact and recommendations will be provided to the Director of that VA facility, to whom such authority to discontinue educational benefits or disapprove enrollments or reenrollments has been delegated.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) *Purpose.* (1) The Committee on Educational Allowances is established to assist the Director of the VA facility of jurisdiction in reaching a conclusion as to whether, in a specific case, educational assistance to all individuals enrolled in any course or courses offered by the educational institution should be discontinued and, if appropriate, whether approval of all further enrollments or reenrollments in those courses should be denied to veterans, servicemembers, reservists, or other eligible persons pursuing those courses under programs administered by VA because a requirement of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part, is not being met or a provision of such statute or regulation has been violated.

(2) The function of the Committee on Educational Allowances is to develop facts and recommend action to be taken on the basis of the facts found. A hearing before the Committee is not in the nature of a trial in a court of law. Instead, it is an administrative inquiry designed to create a full and complete record upon which a recommendation can be made as to whether the Director should discontinue payment of educational benefits and/or deny approval of new enrollments or reenrollments. Both the interested educational institution and VA Regional Counsel, or designee, representing VA, will be afforded the opportunity to present to the Committee any evidence, argument, or other material considered pertinent.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) *Jurisdiction.* The Committee on Educational Allowances will consider only those cases which are referred in accordance with §§ 21.4210(g) and 21.4212.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Committee members.* The Committee on Educational Allowances will consist of three employees of the VA facility of jurisdiction, at least one of whom is familiar with the adjudication of claims for benefits administered by the Veterans Benefits Administration. The Director of the VA facility of jurisdiction will designate a Chairperson. In the event that any member becomes unable to serve for any reason, the Director may appoint a replacement member. Before the Committee resumes its proceedings, the new member will be given an opportunity to apprise himself or herself of the actions and testimony already taken by the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) *Duties and responsibilities of the Committee.* (1) The function of the Committee on Educational Allowances is to make recommendations to the Director of the VA facility of jurisdiction in connection with specific cases referred for consideration as provided in §§ 21.4210(g) and 21.4212.

(2) The performance of this function will include:

(i) Hearing testimony or argument from witnesses or representatives of educational institutions and VA, as appropriate, when such persons appear personally before the Committee;

(ii) Receiving and reviewing all the evidence, testimony, briefs, statements, and records included in each case; and

(iii) Furnishing the Director of the VA facility of jurisdiction a written statement setting forth specifically the question or questions considered, a summation of the essential facts of record, recommendations as to issues referred for consideration by the Committee, and the basis therefor. In any case where there is not unanimity,

both the majority and the minority views and recommendations will be furnished.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

13. Section 21.4212 is added to read as follows:

§ 21.4212 Referral to Committee on Educational Allowances.

(a) *Form and content of referral to Committee.* When the Director of the VA facility of jurisdiction refers a case to the Committee on Educational Allowances, as provided in § 21.4210(g), the referral will be in writing and will—

(1) State the approval, reporting, recordkeeping, or other criteria of statute or regulation which the Director has cause to believe the educational institution has violated;

(2) Describe the substantial pattern of veterans, servicemembers, reservists, or eligible persons receiving educational assistance to which they are not entitled which the Director has cause to believe exists, if applicable;

(3) Outline the nature of the evidence relied on by the Director in reaching the conclusions of paragraphs (a)(1) and (a)(2) of this section;

(4) Describe the Director's efforts to obtain corrective action and the results of those efforts; and

(5) Ask the Committee on Educational Allowances to perform the functions described in §§ 21.4211, 21.4213, and 21.4214 and to recommend to the Director whether educational assistance payable to individuals pursuing the courses in question should be discontinued and approval of new enrollments or reenrollments denied.

(b) *Notice of the referral.* (1) At the time of referral the Director will—

(i) Send notice of the referral, including a copy of the referral document, by certified mail to the educational institution. The notice will include statements that the Committee on Educational Allowances will conduct a hearing; that the educational institution has the right to appear before the Committee and be represented at the hearing to be scheduled; and that, if the educational institution intends to appear at the hearing, it must notify the Committee within 60 days of the date of mailing of the notice;

(ii) Provide an information copy of the notice and referral document to the State approving agency of jurisdiction; and

(iii) Place a copy of the notice and referral document on display at the VA facility of jurisdiction for review by any interested party or parties.

(2) The Director will provide a copy of the notice and referral document to the VA Regional Counsel, or designee, of jurisdiction, who will represent VA before the Committee on Educational Allowances.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

14. Section 21.4213 is added to read as follows:

§ 21.4213 Notice of hearing by Committee on Educational Allowances.

(a) *Content of hearing notice.* In any case referred to the Committee on Educational Allowances for consideration, a hearing will be held. If, as provided in § 21.4212(b), the educational institution has timely notified the Committee of its intent to participate in the hearing, the educational institution will be notified by certified letter from the Chairperson of the date when the hearing will be held. This hearing notification will inform the educational institution of—

(1) The time and place of the hearing;

(2) The matters to be considered;

(3) The right of the educational institution to appear at the hearing with representation by counsel, to present witnesses, to offer testimony, to present arguments, and/or to submit a written statement or brief; and

(4) The complete hearing rules and procedures.

(b) *Expenses connected with hearing.* The notice also will inform the educational institution that VA will not pay any expenses incurred by the educational institution resulting from its participation in the hearing, including the expenses of counsel or witnesses on behalf of the educational institution.

(c) *Publication of hearing notice.* Notice of the hearing will be published in the **Federal Register**, which will constitute notice to any interested individuals, and will indicate that, while such individuals may attend and observe the hearing, they may not participate unless called as witnesses by VA or the educational institution.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034(a), 3241(a), 3690)

15. Section 21.4214 is added to read as follows:

§ 21.4214 Hearing rules and procedures for Committee on Educational Allowances.

(a) *Rule 1.* The Chairperson of the Committee on Educational Allowances will be in charge of the proceedings, will administer oaths or affirmations to witnesses, and will be responsible for the official conduct of the hearing. A majority of the members of the Committee will constitute a quorum. No party to the proceedings may conduct a *voir dire* of the Committee members.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) *Rule 2.* At the opening of the hearing, the Chairperson of the Committee on Educational Allowances will inform the educational institution of the purpose of the hearing, the nature of the evidence of record relating to the asserted failures or violations, and the applicable provisions of law and VA regulations. The Chairperson will advise the VA Regional Counsel, or designee, representing VA, that the Committee on Educational Allowances will entertain any relevant evidence or witnesses which VA Counsel presents to the Committee and which would substantiate a decision by the Committee to recommend that the Director of the VA facility of jurisdiction take an adverse action on the issues submitted for its review. The educational institution will be advised of its right to present any evidence, relevant to the issues submitted for the Committee's review, by oral or documentary evidence; to submit rebuttal evidence; to present and cross-examine witnesses; and to make such statements as may be appropriate on its behalf for a true and full disclosure of the facts. VA Counsel will be allowed to cross-examine any witnesses offered by the educational institution and to reply to any written briefs or arguments submitted to the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) *Rule 3.* Any testimony or evidence, either oral or written, which the Committee on Educational Allowances deems to be of probative value in deciding the question at issue will be admitted in evidence. While irrelevant, immaterial, or unduly repetitious evidence, testimony, or arguments should be excluded, reasonable latitude will be permitted with respect to the relevancy, materiality, and competency of evidence. In most instances the evidence will consist of official records of the educational institution and VA, and these documents may be attested to and introduced by affidavit; but the introduction of oral testimony by the educational institution or by VA will be allowed, as appropriate, in any instance where the educational institution or VA Counsel desires. VA, however, will neither subpoena any witness on behalf of the educational institution for such purposes nor bear any expenses in connection with the appearance of such witness. In instances where the evidence reasonably available consists of signed written statements, secondary or hearsay evidence, etc., such evidence may be introduced into the record and

will be given the weight and consideration which the circumstances warrant.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Rule 4.* A verbatim stenographic or recorded transcript of the hearing will be made. This transcript will become a permanent part of the record, and a copy will be furnished to the educational institution and the VA Counsel at the conclusion of the proceeding, unless furnishing of the copy of the transcript is waived by the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) *Rule 5.* The Chairperson of the Committee on Educational Allowances will identify all exhibits in the order of introduction or receipt (numerically for VA exhibits and alphabetically for exhibits introduced by the educational institution). All such original exhibits or documents shall be attached to the original of the transcript. VA shall make photocopies or certified copies and attach them to the copy of the transcript furnished to the educational institution and the VA Counsel. The original transcript will accompany the Committee's recommendation to the Director of the VA facility of jurisdiction along with all exhibits, briefs, or written statements received by the Committee during the course of the proceedings. Such documents should be clearly marked to indicate which were received into evidence and relied upon by the Committee in making its recommendations.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(f) *Rule 6.* The Committee on Educational Allowances, at its discretion, may reasonably limit the number of persons appearing at the hearing, including any affected individuals presented as witnesses by VA or the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(g) *Rule 7.* Any person who is presented to testify will be required to be duly placed under oath or affirmation by the Chairperson of the Committee on Educational Allowances. If an official of the educational institution desires to present a statement personally, the individual will be required to be placed under oath or affirmation. The Chairperson will advise each witness that the Committee understands that he or she is voluntarily appearing before the Committee; that any testimony or statement given will be considered as being completely voluntary; and that no one has authority to require the individual to make any statement or answer any question against his or her will before the Committee, except that a person called as a witness on behalf of either VA or the educational institution must be willing to submit to cross-examination with respect to testimony given. Each witness will also be advised that his or her testimony or statement, if false, even though voluntary, may subject him or her to prosecution under Federal statutes.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(h) *Rule 8.* Any member of the Committee on Educational Allowances may question any witness presented to testify at the hearing or either a representative of the educational institution or the VA Counsel concerning matters that are relevant to the question at issue. Generally, questioning by a Committee member will be limited to the extent of clarifying information on the facts and issues involved.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(i) *Rule 9.* If the educational institution fails to timely notify the Committee of its intent to participate in a hearing or if a representative of the educational institution is scheduled to appear for a hearing but, without good cause, fails to appear either in person or by writing, the Committee will proceed with the hearing and will review the case on the basis of the evidence of record which shall be presented by the VA Counsel.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(j) *Rule 10.* Any objection by an authorized representative of the educational institution or the VA Counsel on a ruling by the Chairperson of the Committee on Educational Allowances regarding the admissibility of testimony or other evidence submitted will be made a matter of record, together with the substance in brief of the testimony intended or other evidence concerned. If the other evidence concerned is in the form of an affidavit or other document, it may be accepted for filing as a future reference if it is later ruled admissible as part of the record of the hearing.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(k) *Rule 11.* Objections relating to the jurisdiction or membership of the Committee on Educational Allowances or the constitutionality of statutes or the constitutionality of, or statutory authority for, VA regulations, are not before the Committee for decision. The time of the Committee will not be used to hear arguments in this regard. However, any such matters outside the province of the Committee may be the subject of a brief or a letter for consideration by the VA Office of General Counsel upon completion of the hearing. The ruling of such authority upon such issues will be obtained and included in the record before the Committee's recommendations are submitted to the Director of the VA facility of jurisdiction. If the VA General Counsel's ruling on such legal issues necessitates reopening the proceeding, that shall be done before the Committee makes its recommendations to the Director of the VA facility of jurisdiction.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(l) *Rule 12.* The hearing will be open to the public.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(m) *Rule 13.* The hearing will be conducted in an orderly manner with dignity and decorum. The conduct of members of the Committee on Educational Allowances, the VA Counsel, and any representatives of the educational institution shall be characterized by appropriate impartiality, fairness, and cooperation. The Chairperson of the Committee shall take such action as may be necessary, including suspension of the hearing or the removal of the offending person from the hearing room for misbehavior, disorderly conduct, or the persistent disregard of the Chairperson's ruling. Where this occurs, the Chairperson will point out that the Committee is entitled to every possible consideration in order that the case may be presented clearly and fully, which may be accomplished only through observance of orderly procedures.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(n) *Rule 14.* The Chairperson of the Committee on Educational Allowances will conduct the hearing proceedings in such a manner that will protect from disclosure information which tends to disclose or compromise investigative sources or methods or which would violate the privacy of any individual. The salient facts, which form the basis of charges, may be disclosed and discussed without revealing the source.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(o) *Rule 15.* At the close of the hearing, the Chairperson of the Committee on Educational Allowances shall inform the appropriate representative of the educational institution that the arguments and the evidence presented will be given careful consideration; and that notice of the decision of the Director of the VA facility of jurisdiction, together with the Committee's recommendations, will be furnished to the educational institution and the VA Counsel at the earliest possible time. The Chairperson will also indicate that notice of the Director's decision will be published in the **Federal Register** for the information of all other interested persons.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(p) *Rule 16.* In making its findings of facts and recommendations, the Committee on Educational Allowances will consider only questions which are referred to it by the Director of the VA facility of jurisdiction as being at issue and which are within the jurisdiction of the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

16. Section 21.4215 is added to read as follows:

§ 21.4215 Decision of Director of VA facility of jurisdiction.

(a) *Decision.* The Director of the VA facility of jurisdiction will render a written decision on the issue of discontinuance of payments of benefits and/or denial of further enrollments or reenrollments in the course or courses at the educational institution which was the subject of the Committee on Educational Allowances proceedings.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) *Basis of decision.* (1) The decision of the Director of the VA facility of jurisdiction will be based upon all admissible evidence of record, including—

(i) The recommendations of the Committee on Educational Allowances;

(ii) The hearing transcript and the documents admitted in evidence; and

(iii) The ruling on legal issues referred to appropriate authority.

(2) The decision will clearly describe the evidence and state the facts on which the decision is based and, in the event that the decision differs from the recommendations of the Committee on Educational Allowances, will give the reasons and facts relied upon by the Director in deciding not to follow the Committee majority's recommendations.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) *Correction of deficiencies.* If the Director of the VA facility of jurisdiction believes that the record provided for review is incomplete or for any reason should be reopened, before rendering a decision he or she will order VA staff to gather any additional necessary evidence and will notify the educational institution that it may comment upon the new evidence added. The Director will then notify the educational institution as to whether the matter will be resubmitted to the Committee on Educational Allowances for further proceedings, on the basis of the new circumstances. If the matter is referred back to the Committee, the Director will defer a decision until he or she has received the Committee's new recommendations based upon all of the evidence of record.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Effective date.* If the decision of the Director of the VA facility of jurisdiction is adverse to the educational institution, the decision shall indicate specifically the effective date of each adverse action covered by the decision.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) *Notification of decision.* (1) The Director of the VA facility of jurisdiction shall send a copy of the decision to the educational institution by certified mail, return receipt requested. A copy of the decision also will be provided by regular mail to the institution's legal representative of record, if any. If the decision is adverse to the educational institution, the Director will enclose a notice of the educational institution's right to have the Director, Education Service review the decision.

(2) The Director of the VA facility of jurisdiction will also send a copy of the decision to:

(i) The State approving agency; and

(ii) VA Counsel.

(3) The Director of the VA facility of jurisdiction shall post a copy of the decision at the VA facility of jurisdiction. A copy of the decision shall be published in the **Federal Register**.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

17. Section 21.4216 is added to read as follows:

§ 21.4216 Review of decision of Director of VA facility of jurisdiction.

(a) *Decision is subject to review by Director, Education Service.* A review by the Director, Education Service of a decision of a Director of a VA facility of jurisdiction to terminate payments or disapprove new enrollments or reenrollments, when requested by the educational institution, will be based on the evidence of record when the Director of the VA facility of jurisdiction made that decision. It will not be de novo in nature and no hearing on review will be held.

(b) *Authority of Director, Education Service.* The Director, Education Service has the authority to affirm, reverse, or remand the original decision. In the case of such a review, the reviewing official's decision, other than a remand, shall become the final Department decision on the issue presented.

(c) *Notice of decision of Director, Education Service is required.* Notice of the reviewing official's decision will be provided to the interested parties and published in the **Federal Register**, in the same manner as is provided in § 21.4215(e) for decisions of the Director of the VA facility of jurisdiction, for the information of all concerned.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

18. The authority citation for part 21, subpart G is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, unless otherwise noted.

§ 21.5130 [Amended]

19. In § 21.5130, paragraphs (b) and (c) are removed, and paragraphs (d), (e), (f), and (g) are redesignated as paragraphs (b), (c), (d), and (e), respectively.

§ 21.5200 [Amended]

20. In § 21.5200, the introductory text is amended by removing ''in the same manner as they are applied in the administration of chapters 34 and 36''; paragraph (h) is removed; paragraph (j) is redesignated as paragraph (h); and paragraph (i) is revised and paragraphs (j), (k), (l), (m), (n), and (o) are added, to read as follows:

§ 21.5200 Schools.

* * * * *

(i) Section 21.4210—Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.

(j) Section 21.4211—Composition, jurisdiction and duties of Committee on Educational Allowances.

(k) Section 21.4212—Referral to Committee on Educational Allowances.

(l) Section 21.4213—Notice of hearing by Committee on Educational Allowances.

(m) Section 21.4214—Hearing rules and procedures for Committee on Educational Allowances.

(n) Section 21.4215—Decision of Director of VA facility of jurisdiction.

(o) Section 21.4216—Review of decision of Director of VA facility of jurisdiction.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

21. The authority citation for part 21, subpart K, is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

22. Section 21.7133 is revised to read as follows:

§ 21.7133 Suspension or discontinuance of payments.

VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034, 3690)

§ 21.7135 [Amended]

23. In § 21.7135, paragraph (i) introductory text and paragraph (i)(2) are amended by removing ''§ 21.4207'' and adding, in its place, ''§ 21.4211(d) and (g)''; and paragraphs (i)(1), (j)(1), and (k)(1) are amended by removing ''§ 21.4134'' wherever it appears, and adding, in its place, ''§ 21.4210''.

24. In § 21.7158, the section heading, paragraph (b)(2), and the authority citation for paragraph (b) are revised, to read as follows:

§ 21.7158 False, late, or missing reports.

* * * * *

(b) * * *

(2) If an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove that institution's or establishment's courses for further enrollments and may discontinue educational assistance to veterans and servicemembers already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034, 3690)

Subpart L—Educational Assistance for Members of the Selected Reserve

25. The authority citation for part 21, subpart L is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

§ 21.7624 [Amended]

26. Section 21.7624(b) is amended by removing ''21.4202(b)'' and adding, in its place, ''21.4210(b)''.

27. Section 21.7633 is revised to read as follows:

§ 21.7633 Suspension or discontinuance of payments.

VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 10 U.S.C 16136(b); 38 U.S.C. 3690)

§ 21.7635 [Amended]

28. In § 21.7635, the introductory text of paragraph (e) is amended by removing ''§ 21.4207 of this part'', and adding, in its place, ''§ 21.4211(d) and (g)''; paragraph (e)(2) is amended by removing ''§ 21.4207 of this part'', and adding, in its place, ''§ 21.4211(d) and (g)''; and paragraphs (e)(1), (f)(1), and (g)(1) are amended by removing ''§ 21.4134 of this part'' wherever it appears, and adding, in its place, ''§ 21.4210''.

§ 21.7658 [Amended]

29. In § 21.7658, paragraph (b)(1) introductory text is amended by removing ''negligent'' and adding, in its place, ''negligent:''; paragraph (b)(1)(i) is amended by removing ''institution of higher learning to report,'' and adding, in its place, ''educational institution to report'' and by removing ''reservist,'' and adding, in its place, ''reservist;''; paragraph (b)(1)(ii) is amended by removing ''§ 21.7644(b) of this part'' and adding, in its place, ''§ 21.7644(c)''; and the section heading, the heading of paragraph (b), and paragraph (b)(2) are revised to read as follows:

§ 21.7658 False, late, or missing reports.

* * * * *

(b) *Educational institution or training establishment.* * * *

(2) If an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove that institution's or establishment's courses for further enrollments and may discontinue educational assistance to reservists already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3690)

[FR Doc. 98–17409 Filed 6–30–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN84–1a; FRL–6114–8]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On July 9, 1997, the State of Indiana submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency for rule changes specific to the power plant at the University of Notre Dame located in Saint Joseph County, Indiana. The submittal provides for revised limits on particulate matter (PM) emissions from five of Notre Dame's boilers. The revised limits are less stringent, overall, than the limits in the current SIP. Air quality modeling has been conducted, however, which shows that the National Ambient Air Quality Standards (NAAQS) will still be protected under the new regulations.

DATES: The ''direct final'' rule is effective on August 31, 1998, without further notice unless EPA receives adverse or critical written comments by July 31, 1998. If adverse written comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone David Pohlman at (312) 886–3299 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, at (312) 886–3299.

SUPPLEMENTARY INFORMATION:

I. Background

Indiana's submittal of July 9, 1997, contains revisions to title 326 Indiana Administrative Code (326 IAC) 6–1–18, Saint Joseph County particulate emissions limitations. The purpose of

these changes is to revise emission limits for the five boilers at the University of Notre Dame power plant.

Public hearings were held on the rules on June 5 and November 6, 1996, in Indianapolis, Indiana. The rules became effective at the State level on May 22, 1997, and were published in the Indiana Register on June 1, 1997.

II. Analysis of State Submittal

The revisions to 326 IAC 6–118 affect particulate matter and/or heat input limits for five boilers at the University of Notre Dame. The particulate matter limit for Boiler 1 is increased from 0.01 pounds per million British Thermal Units (1b/MMBTU) to 0.087 1b/MMBTU; Boiler 4's particulate limit is increased from 0.01 1b/MMBTU to 0.17/MMBTU, and the heat input limit for Boiler 4 is decreased from 284 million British Thermal Units per hour (MMBTU/hr) to 234 MMBTU/hr; and for Boiler 5, the particulate limit is decreased from 0.17 1b/MMBTU to 0.02 1b/MMBTU, while the heat input limit is increased from 137 MMBTU/hr to 244.5 MMBTU/hr. In addition, individual annual particulate limits for each of the five boilers are replaced by a collective annual limit for Boilers 1, 2, 3, 4, and 5 of 118.7 tons/year.

The general criteria used by the EPA to evaluate such emissions trades, or ''bubbles'', under the Clean Air Act and applicable regulations are set out in the EPA's Emissions Trading Policy statement (ETSP) (see 51 FR 43814). Emissions trades such as Notre Dame's, which result in an overall increase in allowable emissions, require a ''Level III'' modeling analysis under the ETPS to ensure that the NAAQS will be protected. A Level III analysis is a full-scale ambient dispersion analysis which must include emissions from the facility involved in the emissions trade as well as from any nearby facilities and background pollutant concentrations.

The modeling analysis submitted by the Indiana Department of Environmental Management (IDEM) in support of the proposed Notre Dame SIP revision was consistent with a Level II analysis, which only includes sources directly involved with the trade. This is not acceptable as a demonstration that the NAAQS will not be violated as a result of the Notre Dame rule changes. However, a further analysis was conducted by the EPA to determine the approvability of the State's submittal for Notre Dame. This analysis included the Notre Dame sources involved in the SiP revision, as well as other nearby sources and background pollutant concentrations. The analysis showed that the SIP revision request will not cause or contribute to any exceedances of the PM NAAQS.

III. Final Rulemaking Action

Indiana's submittal includes revisions to 326 IAC 6–1–18. The EPA has undertaken an analysis of this SIP revision request based on a review of the materials presented by IDEM, and the modeling analysis conducted by the EPA, and has determined that the SIP revision request is approvable because it is consistent with applicable Clean Air Act provisions, including protection of the NAAQS for PM in the Saint Joseph County area. It should be noted that the University of Notre Dame remains subject to all other applicable provisions of 326 IAC 6–1.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should specified written adverse or critical comments be filed. This action will become effective without further notice unless the Agency receives relevant adverse written comments on the parallel proposed rule (published in the proposed rules section of this **Federal Register**) by July 31, 1998. Should the Agency receive such comments, it will publish a final rule informing the public that this action did not take effect. 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 August 31, 1998.

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

This final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because 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, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, 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. *EPA,* 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(20).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. 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 the private sector, result from this action.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress, and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of

particular applicability; rules relating to agency management of personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 31, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Incorporation by reference, Intergovernmental relations.

Dated: June 11, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

For the reasons stated in the preamble, 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 *35 et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(123) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(123) On July 9, 1997, Indiana submitted a site specific SIP revision request for the University of Notre Dame in Saint Joseph County, Indiana. The submitted revision amends 326 IAC 6–1–18, and provides for revised particulate matter and heat input limitations on the five boilers at Notre Dame's power plant.

(i) *Incorporation by reference.* Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 18: St. Joseph County. Added at 20 In. Reg. 2299. Effective May 22, 1997.

[FR Doc. 98–17380 Filed 6–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX98–1–7386; FRL–6117–3]

Approval and Promulgation of Air Quality State Implementation Plans, Texas; Recodification of, and Revisions to the State Implementation Plan; Chapter 114

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving in this action the recodification of and revision to the Texas State Implementation Plan (SIP) for Chapter 114, ''Control of Air Pollution from Motor Vehicles.'' This revision was submitted by the Governor on November 20, 1997, to reformat and renumber existing state Chapter 114 sections into seven new subchapters (A through G) without substantial technical changes and to remove original paragraph 114.1(e), concerning leaded gasoline dispensing labeling requirements.

DATES: This action is effective on August 31, 1998 without further notice unless the agency receives relevant adverse comments by July 31, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents about this action are available for public inspection during normal business hours at the above and following location. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7354 or via e-mail at scoggins.paul@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region 6 address.

SUPPLEMENTARY INFORMATION:

I. Background

On November 20, 1997, the Governor of Texas formally submitted a recodification of, and revisions to, the Texas SIP for Regulation IV, 30 TAC Chapter 114, ''Control of Air Pollution from Mobile Vehicles.'' These changes were submitted to reformat and renumber existing state Chapter 114 sections into seven new subchapters (A through G) without substantial technical changes and to remove original paragraph 114.1(e), concerning leaded gasoline dispensing labeling requirements.

II. Texas Chapter 114 Format Revisions

Chapter 114 includes the rules and regulations providing for the protection of environment from mobile vehicles which were divided into sections. The resulting new format divides the existing sections into subchapters (A through G) and renumbers the original sections within the new subchapters. The following Chapter 114 subchapters and sections have been adopted by the commission.

SUBCHAPTER A: DEFINITIONS

114.1 Definitions.
114.2 Inspection and Maintenance (I/M) Definitions.
114.3 Low Emission Fleet Vehicle Definitions.
114.4 Vehicle Retirement and Mobile Emission Reduction Credit Definitions.
114.5 Transportation Planning Definitions.

SUBCHAPTER B: MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

114.20 Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles.
114.21 Exclusions and Exemptions.

SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE

114.50 Vehicle Emissions Inspection Requirements.
114.51 Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.
114.52 Waivers and Extensions for Inspection Requirements.
114.53 Inspection and Maintenance Fees.

SUBCHAPTER D: OXYGEN REQUIREMENTS FOR GASOLINE

114.110 Oxygenated Fuels.

SUBCHAPTER E: LOW EMISSION FLEET VEHICLE REQUIREMENTS

114.150 Requirements for Mass Transit Authorities.
114.151 Requirements for Local Governments and Private Persons.
114.152 Use of Certain Vehicles for Compliance.
114.153 Exceptions.
114.154 Exceptions for Certain Mass Transit Authorities.
114.155 Reporting.
114.156 Recordkeeping.
114.157 Program Compliance Credits.

SUBCHAPTER F: VEHICLE RETIREMENT AND MOBILE EMISSION REDUCTION CREDITS; VEHICLE RETIREMENT

114.200 Accelerated Vehicle Retirement Program.

Mobile Emission Credits

114.201 Mobile Emission Reduction Credit Program.
114.202 The Texas Mobile Emission Reduction Credit Fund.

SUBCHAPTER G: TRANSPORTATION PLANNING

114.250 Memorandum of Understanding with the Texas Department of Transportation.
114.260 Transportation Conformity.
114.270 Transportation Control Measures.

The following original sections were repealed by the commission.

114.1 Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles.
114.3 Vehicle Emissions Inspection Requirements.
114.4 Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.
114.5 Exclusions and Exemptions.
114.6 Waivers and Extensions for Inspection Requirements.
114.7 Inspection and Maintenance Fees.
114.13 Oxygenated Fuels.
114.23 Transportation Control Measures.
114.25 Memorandum of Understanding with the Texas Department of Transportation.
114.27 Transportation Conformity.
114.29 Accelerated Vehicle Retirement Program.
114.30 Definitions.
114.31 Requirements for Mass Transit Authorities.
114.32 Requirements for Local Governments and Private Persons.
114.33 Use of Certain Vehicles for Compliance.
114.34 Exceptions.
114.35 Exceptions for Certain Mass Transit Authorities.
114.36 Reporting.
114.37 Recordkeeping.
114.38 Program Compliance Credits.
114.39 Mobile Emission Reduction Credit Program.
114.40 The Texas Mobile Emission Reduction Credit Fund.

III. Analysis of State Submittal

Subchapter A, Sections 114.1–114.5, which cover mobile source program definitions, contain the definitions for the entire chapter. New Section 114.1 definitions were taken from original Section 114.30, ''Definitions'' of the Texas Clean Fuel Fleet program and from original Section 114.3(a) ''Definitions'' of the Vehicle Emissions Inspection Requirements. New Section 114.2 definitions were taken from original Section 114.3 of remaining definitions numbered (1)–(5), (8)–(13), (15), (16) and the commission added a new definition, ''Two-speed idle I/M test.'' New Section 114.3 definitions were taken from original Section 114.30 of remaining definitions with a Section name change from ''Clean Fuel Fleet Vehicle'' program definitions to ''Low Emission Fleet Vehicle Definitions.'' New Section 114.4 definitions were taken from original Section 114.29 and new Section 114.5 definitions were taken from original Section 114.23.

Subchapter B, Sections 114.20 and 114.21 contain the requirements for the vehicle antitampering program. New Section 114.20 was created from original Section 114.1, and new Section 114.21 was created from original Section 114.5. Original Section 114.1(e) containing the leaded gasoline dispensing labeling requirement, was removed from new Section 114.20. The reference to paragraph (f) in original Section 114.5(a)(2) was removed from new Section 114.21(a)(2).

Subchapter C, Sections 114.50–114.53, contain the requirements for the vehicle inspection and maintenance program. New Sections 114.50, 114.51, 114.52, and 114.53 were created from original Sections 114.3, 114.4, 114,6, and 114.7 respectively.

Subchapter D, Section 114.100 contains the requirements for the oxygenated fuels program and was created from original section 114.13.

Subchapter E, Sections 114.150–114.157, contain the requirements for the low emission fleet vehicle program. New Sections 114.150, 114.151, 114.152, 114.153, 114,154, 114.155, 114.156, and 114.157 were created from original Sections 114.31, 114.32, 114.33, 114.34, 114.35, 114.36, 114.37, and 114.38, respectively.

Subchapter F, Sections 114.200–114.202, contain the requirements for the vehicle retirement and mobile emission reduction credits program. New Sections 114.200, 114.201, and 114.202 were created from original Sections 114.29, 114.39, and 114.40, respectively.

Subchapter G, Sections 114.250, 114.260, and 114.270, contain the requirements for the transportation planning program. New Section 114.250 was created from original Section 114.25. New Section 114.260 was created from original section 114.27. The last sentence of paragraph 114.260(b) was changed from ''Affected nonattainment or maintenance areas include El Paso, Houston/Galveston, Dallas/Fort Worth, Beaumont/Port Arthur, and Victoria.'' to ''The affected nonattainment and maintenance areas are listed in section 101.1 of the title (relating to Definitions).'' In new Section 114.260, paragraph (d)(2)(A)(x), the word ''pursuant'' was changed to ''under.'' Section 114.270 was created from the original Section 114.23 and the following was added to paragraph (b), to the end of subsection (1); ''* * * as defined in Section 101.1 of this title (relating to Definitions) and to the end of subsections (2), (3), and (4), ''* * * as defined in Section 101.1 of this title.''

In addition, the following administrative change has been made to all rules and regulations in which they appear:

1. ''TNRCC'' to ''commission''.

IV. Final Action

The EPA is approving the recodification of and revision to the Texas SIP for Regulation IV, 30 TAC Chapter 114. Except as noted in the following paragraph, this action reflects a recodification, not actual approval of underlying requirements. The original Section numbers have been renumbered and reformatted into specific subchapters without changes to the underlying requirements or contents, except where noted in the following paragraph. Previous approval or disapproval of Chapter 114 Sections and contents remain unchanged.

In addition, a new definition—''Two-speed idle I/M test''—-and the removal of original paragraph 114.1(e), leaded gasoline dispensing labeling requirements, are approved. Minor editorial changes as noted above in the part III, Analysis of State Submittal, are also approved.

The EPA is publishing this action without prior proposal because the agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is proposing to approve the SIP revision should relevant adverse comments be filed. This rule will be effective on August 31, 1998 without further notice unless the Agency receives adverse comments by July 31, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal of the final rule and inform the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 31, 1998 and no further action will be taken on the proposed rule.

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

V. Administrative Requirements

A. Executive Order (E.O.) 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review. In addition, this regulatory action is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

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. *See* 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.

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

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to 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.

The EPA has determined that the approval action 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 preexisting 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.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804 (2).

E. Petitions for Judicial Review

Under section 307(b) (1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 31, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307 (b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 9, 1998.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(111) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c)* * *

(111) Recodified and revised Regulation IV, 30 TAC Chapter 114 ''Control of Air Pollution From Motor Vehicles'' regulations of Texas submitted by the Governor on November 20, 1997, to reformat original Chapter 114 sections into seven new subchapters (A through G) and to remove original section 114.1(e), concerning leaded gasoline dispensing labeling requirements.

(i) Incorporation by reference.

(A) Commission Order 97–0713-RUL, adopted by the commission on November 5, 1997.

(B) SIP narrative entitled ''Revisions to 30 TAC Chapter 114 and to the State Implementation Plan (Reformatting of the Chapter)'' adopted by the commission on November 5, 1997, addressing: adoption of new Sections 114.1–114.5, 114.20, 114.21, 114.50–114.53, 114.100, 114.150–114.157, 114.200–114.202, 114.250, 114.260, 114.270, and repeal of original sections 114.1, 114.3–114.7, 114.13, 114.23, 114.25, 114.27, 114.29–114.40.

[FR Doc. 98–17381 Filed 6–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL163–1a; FRL–6119–2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Direct Final Rule.

SUMMARY: On August 21, 1995, U.S. EPA promulgated a site-specific volatile organic material (VOM) rule for Riverside Laboratories, Inc.'s (Riverside) Kane County facility. The rule consisted primarily of a compliance date extension for Riverside through December 31, 1996, after which time Riverside is required to meet the applicable requirements of the Chicago-area Federal Implementation Plan (FIP). On October 10, 1997, the State of Illinois requested that U.S. EPA approve a change in regulatory status for Riverside, based on Riverside's current compliance with the applicable State Implementation Plan (SIP) rule. For the reasons discussed below, U.S. EPA is today approving the State plan as applying to Riverside.

U.S. EPA is taking this action as a ''direct final'' rulemaking; the rationale for this approach is set forth below. Elsewhere in this **Federal Register**, U.S. EPA is proposing this action and soliciting comment. If adverse written comments or a request for a public hearing are received, U.S. EPA will withdraw the direct final rule and it will not take effect. U.S. EPA will address the comments received in a new final rule. If no adverse written comments are received, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective August 31, 1998 unless written adverse comments or a request for a public hearing are received by July 31, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public the rule will not take effect.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

A public hearing may be requested, to be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer. Interested persons may call Steven Rosenthal at (312) 886–6062 to see if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this action, the scope of which is discussed below.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Steven Rosenthal at (312) 886–6052, before visiting the Region 5 office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR-18J) at (312) 886–6052.

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 1990, U.S. EPA promulgated a FIP which contained Reasonably Available Control Technology (RACT) regulations for stationary sources of Volatile Organic Compounds (VOC) located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry, and Will.[1] Included in U.S. EPA's rules was a requirement that paper coating sources be subject to 40 CFR 52.741(e)(1)(C), which requires that a source achieves either a coating limit of 2.9 pounds of VOC per gallon of coating or an 81 percent reduction in emissions. On August 30, 1990, Riverside filed a petition for review of the FIP in the United States Court of Appeals for the Seventh Circuit, *Riverside Laboratories, Inc.,* v. *U.S. EPA*, Case No. 90–2886. On August 20, 1991, Riverside filed a petition for reconsideration (amended on September 5, 1991) with U.S. EPA, in which it contended that its economic status prevented the federal rules from being RACT for its facility. Based on the information provided, U.S. EPA agreed to reconsider the RACT rules for Riverside. U.S. EPA also agreed to issue an administrative stay of the applicable FIP rules, pending reconsideration. See 57 FR 27935 (June 23, 1992).

On September 9, 1994, U.S. EPA approved a number of Illinois volatile organic material (VOM)[2] RACT rules, adopted as 35 Ill. Admin. Code Part 218. 59 FR 46562. These rules established State VOM RACT requirements for surface coating operations in the Chicago and Metro-East St. Louis ozone nonattainment areas, and replaced a large section of the Chicago FIP. These regulations include 35 Ill. Admin. Code § 218.204, which contains a RACT rule for paper coating operations that is identical to the applicable FIP rule of 2.9 lbs./gal. (40 CFR 52.741(e)(1)(C)). They also contain the Applicability section, at 35 Ill. Admin. Code § 218.203. Under Section 218.103(a)(2), the effectiveness of the Part 218 rules is stayed as to any source which appealed the FIP and received a stay of the effectiveness of the FIP pending reconsideration. The rule further provides that:

> When USEPA has published in the Federal Register final action to revise or affirm the provisions of the FIP specifically applicable to such individual source or category of sources or such stay is otherwise terminated, the Board shall take corresponding action and the Agency shall submit such action to USEPA for approval. Until such time as USEPA approves the corresponding amendment to this Part, the FIP rule shall remain the applicable implementation plan for that source. * * *

On August 21, 1995, U.S. EPA promulgated a site-specific rule for Riverside (60 FR 43388). This rule consists of a compliance date extension for Riverside through December 31, 1996. During the period of the compliance date extension Riverside was required to, among other things, decrease the use of VOC-containing material. Starting on January 1, 1997, Riverside's polyester paper coating lines were required to meet the applicable FIP requirements in 40 CFR 52.741(e)(1), (e)(2), and (e)(6). In this rulemaking, U.S. EPA also terminated the stay of the FIP.

On February 13, 1996, U.S. EPA approved a revision to the Illinois RACT rules for paper coating operations at 35 Ill. Admin. Code 218.204(c), which further reduced the applicable VOM pounds-per-gallon limitation to 2.3 lbs./gal. 61 FR 5511.

On October 10, 1997, the Illinois Environmental Protection Agency (IEPA) submitted a request to U.S. EPA that it change the regulatory status for Riverside to recognize the applicability of Illinois' SIP, as federally approved on February 13, 1996. In its letter, IEPA states that, as a matter of State law, Riverside is subject to the 2.3 pounds VOC per gallon limit in 35 Ill. Administrative Code 218.204(c). For that reason, IEPA has requested that the Board not be required to conduct further rulemaking. The State intends its October 10, 1997, request to fulfill the ''corresponding action'' condition of

[1] A definition of RACT is cited in a General Preamble-Supplement on CTGs, published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

[2] VOM, as defined by the State of Illinois, is identical to VOC, as defined by U.S. EPA.

Section 218.103(a)(2). U.S. EPA agrees that it is not necessary to require Illinois to conduct additional rulemaking, since the regulations are already in the SIP and Riverside does not contest their applicability (See Riverside's March 26, 1998, letter regarding rule applicability.).

II. Applicability

As a result of this action, the approved State of Illinois regulations, including the emission limits in 35 Ill. Admin. Code 218.204(c) and the associated control requirements, test methods and recordkeeping requirements in Part 218 and the associated definitions in Part 211 shall become the federally approved regulations applicable to Riverside on August 31, 1998. The site-specific rule applicable to Riverside promulgated by U.S. EPA on August 21, 1995, remains in effect and is enforceable after August 31, 1998 for the period before August 31, 1998.

III. Final Action

At the time U.S. EPA approved Ill. Admin. Code Part 218, the Agency determined that the generally applicable rules, along with the appropriate test methods, recordkeeping requirements and definitions, met the applicable statutory requirements for RACT. U.S. EPA also has concluded that the provisions of Ill. Admin. Code 218.204(c) constitute RACT for Riverside's Kane County paper coating operations. They are thus reasonable replacements for the FIP rule that was promulgated by U.S. EPA on June 29, 1990, and the site-specific compliance date extension promulgated for Riverside by U.S. EPA on August 21, 1995.

The U.S. EPA is publishing this action without prior proposal because U.S. EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, U.S. EPA is proposing this action should adverse comments be filed or a request for a hearing be received. This action will become effective without further notice unless the U.S. EPA receives relevant adverse comments or a request for a hearing on the parallel proposed rule (published in the proposed rules section of this **Federal Register**) by July 31, 1998. Should the U.S. EPA receive such comments or a request for a hearing, it will withdraw this final rule and publish a document informing the public that this action did not take effect. 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 August 31, 1998.

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, U.S. 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, U.S. 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.

This action (SIP approval and a supersession of the FIP under section 110) does not create any new requirements, but simply approves requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids U.S. EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, U.S. EPA must undertake various actions in association with 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. 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 the private sector, result from this action.

D. 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 August 31, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

E. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). U.S. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 25, 1998.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, 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 *et seq.*

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (s) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(s) On October 10, 1997, Illinois submitted a site-specific revision to the State Implementation Plan, in the form of a letter from Bharat Mathur, Chief, Bureau of Air, Illinois Environmental Protection Agency. This October 10, 1997, letter requests a change in regulatory status for Riverside Laboratories, Inc.'s Kane County facility, to reflect that the Federal site-specific rule for Riverside (40 CFR 52.741(e)(10)) has been superseded by the State of Illinois regulations, including the emission limits in 35 Illinois Administrative Code 218.204(c) and the associated control requirements, test methods and recordkeeping requirements in Part 218 and the associated definitions in Part 211. These State regulations shall become the federally approved regulations applicable to Riverside on August 31, 1998. The site-specific rule, applicable to Riverside, promulgated by the Environmental Protection Agency on August 21, 1995 (40 CFR 52.741(e)(10)), remains in effect and is enforceable after August 31, 1998 for the period before August 31, 1998.

[FR Doc. 98–17517 Filed 6–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300673; FRL–5795–8]

RIN 2070–AB78

Sodium Chlorate; Extension of Exemption from Requirement of a Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited exemption from the requirement of a tolerance for residues of the *desiccant* sodium chlorate in or on wheat for an additional one and one-half-year period, to January 31, 2000. This action is in response to EPA's granting of an emergency exemption connection with a crisis exemption declared by the state of Mississippi under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on wheat. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective July 1, 1998. Objections and requests for hearings must be received by EPA, on or before August 31, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300673], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300673], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308–9364; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of December 3, 1997 (62 FR 63858) (FRL–5754–1), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited exemption from the requirement of a tolerance for the residues of sodium chlorate in or on wheat, with an expiration date of July 31, 1998. EPA established the exemption from the requirement of a tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of sodium chlorate on wheat for this year growing season due to continued heavy rains resulting in the need for a harvest aid to desiccate winter weeds which developed in the thin stands of an already dimished wheat crop. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of sodium chlorate as a desiccant on wheat.

EPA assessed the potential risks presented by residues of sodium chlorate in or on wheat. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 3, 1997 (62 FR 63858). Based on that data and information considered, the Agency reaffirms that extension of the time-limited exemption from the requirement of a tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited exemption from the requirement of a tolerance is extended for an additional one and one-half-year period. Although this exemption from the requirement of a tolerance will expire and is revoked on January 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide in or on wheat after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the exemptionfrom a requirement of a tolerance. EPA will take action to revoke this exemption from the requirement of a tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance

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

Any person may, by August 31, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300673]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited exemption from the requirement of a tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited exemption from the requirement of a tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: June 7, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

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

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

§ 180.1020 [Amended]

2. In § 180.1020, by amending paragraph (b) by changing the date ''7/31/98'' to read ''1/31/00.''

[FR Doc. 98–17514 Filed 6-30-98; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–20

[FPMR Amendment D–96]

RIN 3090–AG61

Smoking Policy

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Final rule.

SUMMARY: This rule revises the Federal Property Management Regulations to implement Executive Order 13058. As a result, the smoking of tobacco is prohibited in all interior space owned, rented, or leased by the executive branch of the Federal Government, and in any outdoor areas under executive branch control in front of air intake ducts.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Howard Chideckel, Office of Business Performance at (202) 501–0457.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a significant regulatory action for the purpose of Executive Order 12866. This rule is not required to be published in the **Federal Register** for notice and comment, therefore the Regulatory Flexibility Act does not apply. The Paperwork Reduction Act does not apply because the change does not impose reporting, recordkeeping or information collection requirements which require the approval of the Office of Management and Budget pursuant to 44 U.S.C. 3501, et seq. This rule also is exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 101–20

Blind, Concessions, Federal buildings and facilities, Government property management, Occupational safety and health, Parking, Security measures, Smoking.

For the reasons set forth in the preamble, 41 CFR Part 101–20 is amended as follows:

PART 101–20—MANAGEMENT OF BUILDINGS AND GROUNDS

1. The authority citation for Part 101–20 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–20.1—Building Operations, Maintenance, Protection, and Alterations

2. Section 101–20.105–3 is revised to read as follows:

§ 101–20.105–3 Smoking.

(a) Pursuant to Executive Order 13058, ''Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace'' (3 CFR, 1997 Comp., p. 216), it is the policy of the executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is prohibited in all interior space owned, rented, or leased by the executive branch of the Federal Government, and in any outdoor areas under executive branch control in front of air intake ducts.

(b) Exceptions. (1) The policy does not apply in designated smoking areas that are enclosed and exhausted directly to the outside and away from air intake ducts, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area. Agency officials shall not require workers to enter such areas during business hours while smoking is ongoing.

(2) The policy does not extend to any residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long term basis, in a building owned, leased, or rented by the Federal Government.

(3) The policy does not extend to those portions of federally owned buildings leased, rented, or otherwise provided in their entirety to nonfederal parties.

(4) The policy does not extend to places of employment in the private sector or in other nonfederal governmental units that serve as the permanent or intermittent duty station of one or more Federal employees.

(5) Agency heads may establish limited and narrow exceptions that are necessary to accomplish agency missions. Such exceptions must be in writing, approved by the agency head, and to the fullest extent possible provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

(c) Agency heads have responsibility to determine which areas are to be smoking and which areas are to be non-smoking areas. In exercising this responsibility, agency heads will give appropriate consideration to the views of the employees affected and/or their representatives and are to take into consideration the health issues involved. Nothing in this section precludes an agency from establishing more stringent guidelines. Agencies in multi-tenant buildings are encouraged to work together to identify designated smoking areas.

(d) Agency heads shall evaluate the need to restrict smoking at doorways and in courtyards under executive branch control in order to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.

(e) Agency heads shall be responsible for monitoring and controlling areas designated for smoking and for ensuring that these areas are identified by proper signs. Suitable uniform signs reading ''Designated Smoking Area'' shall be furnished and installed by the agency.

(f) Suitable, uniform signs reading ''No Smoking Except in Designated Areas'' shall be placed on or near entrance doors of buildings subject to this section. These signs shall be furnished and installed by the GSA Building Manager in buildings operated by GSA. It shall not be necessary to display a sign in every room of each building.

(g) This smoking policy applies to the judicial branch when it occupies space in buildings controlled by the executive branch. Furthermore, the Federal chief judge in a local jurisdiction may be deemed to be comparable to an agency head and may establish exceptions for Federal jurors and others as indicated in paragraph (b)(5) of this section.

(h) Prior to implementation of this section, where there is an exclusive representative for the employees, the agencies shall meet their obligation under the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 *et seq.*) In all other cases, agencies should consult directly with employees.

Dated: March 16, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98–17469 Filed 6–30–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 121

Organ Procurement and Transplantation Network; Final Rule Revision of Comment Period and Effective Dates

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Extension of Comment Period and Delay of Effective Date for the Organ Procurement and Transplantation Network.

SUMMARY: This document sets forth the revisions required by the Fiscal Year 1998 Supplemental Appropriations Act, Public Law 105–174, signed into law by the President on May 1, 1998. Section 4002 of that Act states that public comments on the Organ Procurement and Transplantation Network (OPTN) Final Rule are permitted until August 31, 1998, and that the OPTN rule will not become effective before October 1, 1998. This document is provided to notify the public about these provisions and to make corresponding changes to the regulation.

DATES: The effective date of the final rule published April 2, 1998 (63 FR 16296), as amended in this rule, is delayed until October 1, 1998. Comments on the final rule may be submitted through August 31, 1998.

ADDRESSES: Written comments may be addressed to Jon L. Nelson, Associate Director, Office of Special Programs, Room 123, Park Building, 12420 Parklawn Drive, Rockville, MD 20857 as provided in the April 2, 1998, final rule, 63 FR 16296.

FOR FURTHER INFORMATION CONTACT: Jon L. Nelson, Associate Director, Office of Special Programs, 5600 Fishers Lane, Room 7–29, Rockville, MD 20857, telephone 301–443–7577.

SUPPLEMENTARY INFORMATION: On April 2, 1998, the Secretary of Health and Human Services published in the **Federal Register** a final rule governing the operation of the Organ Procurement and Transplantation Network. That document invited public comments for a period of sixty days, ending on June 1, 1998. The final rule was to be effective on July 1, 1998.

As a result of the enactment of the Supplemental Appropriations Act, the comment period has been extended until August 31, 1998, and the final rule will become effective on October 1, 1998. Consistent with these extensions, several of the provisions of the final rule whose internal deadlines were tied to the effective date of the final rule are also being extended.

Therefore, 42 CFR Part 121, as promulgated at 63 FR 16296–16338, is amended as follows:

1. The authority citation for Part 121 continues to read as follows:

Authority: Sections 215, 371–376 of the Public Health Service Act (42 U.S.C. 216, 273–274d); Sections 1102, 1106, 1138, and 1872 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8 and 1395ii).

§ 121.3 [Amended]

2. In § 121.3(e), revise ''July 1, 1998,'' wherever it appears to read ''October 1, 1998,''.

§ 121.8 [Amended]

3. § 121.8(c)(1), revise ''July 1, 1999'' to read ''October 1, 1999''.

4. § 121.8(c)(2), revise ''August 31, 1998'' to read ''November 30, 1998''.

Dated: June 2, 1998.

Claude Earl Fox,

Administrator.

Approved: June 23, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–17624 Filed 6–30–98; 8:45 am]

BILLING CODE 4180–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98–36; FCC 98–115]

Assessment and Collection of Regulatory Fees for Fiscal Year 1998

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has revised its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1998. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1998 sections 9(b)(2) and (3) provide for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

EFFECTIVE DATE: August 31, 1998.

FOR FURTHER INFORMATION: Terry Johnson, (202) 418–0445, Office of Managing Director.

SUPPLEMENTARY INFORMATION:

Adopted: June 9, 1998; Released: June 16, 1998

By the Commission:

TABLE OF CONTENTS

Topic	Paragraph No.
I. Introduction	1
II. Background	5
III. Discussion	
A. Cost-Based Fee Methodology	9
B. Relationship of Cost Service to Revenue Requirement	15
C. The 25% Ceiling on Fees	21
D. Application of Cost-Based Methodology to Determine Fee Amounts	
i. Adjustment of Payment Units	25
ii. Calculation of Revenue Requirements	26
iii. Calculation of Regulatory Costs	27
iv. Application of 25% Revenue Ceiling	28
v. Recalculation of Fees	29
vi. Proposed Changes to Fee Schedule	30
a. Commercial AM & FM Radio	31
b. CMRS	41

TABLE OF CONTENTS—Continued

Topic	Paragraph No.
c. Space Stations and Bearer Circuits	
i. Geostationary Satellites	50
ii. Non-geostationary Satellites	54
iii. Bearer Circuits	57
d. Interstate Telephone Service Providers	64
E. Schedule of Regulatory Fees	68
F. Effect of Revenue Redistributions on Major Constituencies	69
G. Procedures for Payment of Regulatory Fees	
i. Installment Payments for Large Fees	70
ii. Annual Payments of Standard Fees	72
iii. Advance Payment of Small Fees	73
iv. Standard Fee Calculations and Payment Dates	74
v. Minimum Fee Payment Liability	76
IV. Ordering Clause	77
V. Authority and Further Information	78

Attachment A—Final Regulatory Flexibility Analysis
Attachment B—Sources of Payment Unit Estimates
Attachment C—Calculation of Revenue Requirements
Attachment D—Calculation of Regulatory Costs
Attachment E—Calculation of FY 1998 Regulatory Fees
Attachment F—Schedule of Regulatory Fees
Attachment G—Comparison between FY 1997 and FY 1998 Proposed & Final Regulatory Fees
Attachment H—Detailed Guidance on Who Must Pay Regulatory Fees
Attachment I—Description of FCC Activities
Attachment J—Factors, measurements and calculations that go into determining station signal contours and associated population coverages
Attachment K—Parties Filing Comments and Reply Comments
Attachment L—FY 1998 AM/FM Regulatory Fees

I. Introduction

1. By this *Report and Order*, the Commission concludes its rulemaking proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for Fiscal Year (FY) 1998. *See* 47 U.S.C. 159(a).

2. Congress has required us to collect $162,523,000 in regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1998. *See* Pub. L. 105–119 and 47 U.S.C. 159(a)(2). This amount is $10,000,000 or nearly 7% more than the amount that Congress designated for recovery through regulatory fees for FY 1997. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, FCC 97–215, released June 26, 1997, 62 FR 37408, July 11, 1997. Thus, we are revising our fees in order to collect the increased amount as specified by Congress. Additionally, we are amending the Schedule in order to simplify and streamline the Fee Schedule, including clarification of feeable categories in the Commercial Mobile Radio Services (CMRS), renaming the LEO category as Space Stations Non-geostationary, and clarifying when those stations must begin paying regulatory fees. We have also revised our methodologies for assessing AM and FM radio fees. *See* 47 U.S.C. 159(b)(3).

3. In revising the fees, we have adjusted the payment units and revenue requirement for each service subject to a fee, consistent with sections 159(b)(2) and (3). In addition, we have made changes to the fees pursuant to public interest considerations such as the 25% cap on increases in the fees which is explained in more detail below. We are amending §§ 1.1152 through 1.1156 to reflect the fee revisions. *See* 47 CFR 1.1152 through 1.1156. *See* also Rule Changes and Attachment F for our revised fee schedule for FY 1998.

4. Finally, we have included, as Attachment H, Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1998. In the following paragraphs, we describe in greater detail our methodology for establishing our FY 1998 regulatory fees.

II. Background

5. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as specified each year by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities. *See* 47 U.S.C. 159(a). *See* Attachment I for a description of these activities. In our FY 1994 *Report and Order*, 59 FR 30984, June 16, 1994, we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required by Congress. *See* 47 U.S.C. 159(b), (f)(1). Subsequently, in our FY 1995, FY 1996, and FY 1997 *Reports and Orders*, 60 FR 34004, June 29, 1995, 61 FR 36629, July 12, 1996, and 62 FR 37408, July 11, 1997, we modified the Schedule to increase by approximately 93 percent, 9 percent, and 21 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect for each of those fiscal years. Also, in our FY 1995, FY 1996, and FY 1997 fee decisions, we amended certain rules governing our regulatory fee program based upon our experience administering the program in prior years. *See* 47 CFR 1.1151 *et seq.*

6. For fiscal years after FY 1994, however, sections 9(b)(2) and (3), respectively, provide for ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

See 47 U.S.C. 159(b)(2), (b)(3). Section 9(b)(2), entitled ''Mandatory Adjustments,'' requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees. *See* 47 U.S.C. 159(b)(2).

7. Section 9(b)(3), entitled ''Permitted Amendments,'' requires us to determine annually whether additional adjustments to the fees are warranted, taking into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are required to ''add, delete, or

reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services.'' *See* 47 U.S.C. 159(b)(3).

8. Section 9(i) requires us to develop an accounting system to adjust our fees to reflect changes in the costs of regulating various services and for other purposes. *See* 47 U.S.C. 9(i). We developed and implemented the cost accounting system in conjunction with FY 1997 fees. For FY 1998, we continue to rely on cost accounting data to identify our regulatory costs and to develop fees based upon these costs. Also, for FY 1998, we have limited the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the ''mandatory adjustments'' to the FY 1997 fees without incorporation of costs. This methodology enables us to develop regulatory fees which more closely reflect our costs of regulation. Finally, section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect. *See* 47 U.S.C. 159(b)(4)(B).

III. Discussion

A. Cost-Based Fee Methodology

9. Congress has required us to recover $162,523,000 in FY 1998 regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.[1] *See* 47 U.S.C. 159(a).

10. In our FY 1998 *NPRM* we developed our proposed FY 1998 fee schedule using the same general methodology as we used in developing fees for FY 1997. We estimated payment units[2] for FY 1998 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1997 fees. Because the total was greater than $162,523,000, we pro-rated the overage among all the existing fee categories reducing the revenue amounts to total $162,523,000.

11. The *NPRM* provided notice that we would rely on the cost accounting system implemented in FY 1997 to assist us in determining our costs of regulation of those services subject to a fee for FY 1998. In response, several interested parties, including the Personal Communications Industry Association (PCIA), BellSouth Cellular Corp., BellSouth Wireless Data, L.P. (BellSouth), and PanAmSat Corporation (PanAmSat), contend that we failed to explain the accounting system sufficiently to permit interested parties to determine how the system distributes costs among our various services. PrimeCo argues that we merely disclosed the results of the cost accounting system and, therefore, interested parties cannot evaluate our cost accounting system or suggest improvements. In addition, PCIA, among others, argues that without more data concerning our assignment of costs, they cannot determine whether the costs attributed to their services are reasonable estimates of our actual costs.

12. The *NPRM* provided sufficient information describing the accounting system to afford interested parties the opportunity to comment. Our *NPRM* made it clear that our cost accounting system relied upon information derived from our personnel/payroll system and our fiscal accounting system as the basis for recording direct and indirect costs, separately and combined, for every major category of service subject to a fee. The cost accounting system was designed to identify the actual costs of regulation by category of service and this information, combined with other data, yield fees more closely reflecting the cost of our regulation. The accounting system collects cost of service information on an employee-by-employee basis.

13. The *NPRM* provided sufficient detail concerning our manner of distributing costs of personnel directly assigned to regulatory activities, and other costs included in our determination of regulatory costs. The system separately identifies direct costs, including salary and expenses for staff directly assigned to our operating Bureaus, and other costs, such as rent, utilities and contracts, directly attributable to such personnel. Also, included as indirect costs are those costs attributable to personnel assigned to overhead functions, including such functions as field and laboratory staff, on a proportional basis; i.e., spread among all categories of service subject to a fee according to their share of direct costs. Finally, in Attachment D of the *NPRM,* we provided a precise calculation of the regulatory costs, including separate discussions of the cost accounting system's accumulation of the direct, indirect and total actual costs for each major category of service. Thus, our *NPRM,* consistent with section 9(i) of the Act, sufficiently described our cost accounting system, including how it distributes actual costs among the various categories of service, affording parties an understanding of the system sufficient for them to submit comments on how the system allocated costs among those services subject to a regulatory fee. 47 U.S.C. 159(i)

14. Our cost accounting system was developed under contract by American Management Systems, Inc. (AMS) in FY 1995. The system has been integrated with the Commission's bi-weekly payroll and fiscal accounting systems and, as such, its procedures conform to generally accepted cost accounting principles and standards as mandated by the General Accounting Office (GAO) and by the U.S. Treasury Department. Because the methodology we employed in developing FY 1998 fees is the same as the one that was used to develop the FY 1997 fees, we adopt by incorporation paragraphs 16–20 of the FY 1997 *Report and Order* which provides detailed information covering how our cost accounting system operates.

B. Relationship of Cost Service to Revenue Requirement

15. PCIA and other commenters contend that the fees are unlawful because allegedly there is no basis for or relationship between the fees the Commission is proposing to collect from a particular class of licenses or regulatees and the amount of regulatory work or oversight associated with those regulatees. We reject the arguments that our proposed fees are inconsistent with the statute or otherwise unlawful because they are not completely cost-based or do not reflect the benefits received by entities subject to a fee payment. Section 9(a) requires that we recover our costs ''in the total amounts required in Appropriations Acts.'' 47 U.S.C. 159(a).

Section 9(a) does not require that we base our fees solely on benefits to regulatees or that the fees recover from an entity only its particular cost of regulation. In our FY 1995 *Report and Order,* we stated that we are not limited to setting regulatory fees only in the amount that reflects services received by regulated entities. 10 FCC Rcd at 13521,

[1] The impact of regulatory fees on the FCC's appropriation is substantial. For example, without regulatory fees to offset the Commission's costs, the FCC would require a Congressional appropriation of $186.5 million for FY 1998. When offsetting regulatory fees are taken into consideration, only $24 million must be appropriated from tax receipts to fund the Commission. Thus, taxpayers are spared the expense of funding almost 87% of the Commission's annual budget. Funds collected as application or filing fees pursuant to section 8 of the Act are deposited into the General Fund of the U.S. Treasury as reimbursement to the United States but, unlike section 9 regulatory fees, do not offset funds appropriated to the Commission. 47 U.S.C. 158(a).

[2] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base units for which fees are calculated.

citing *Skinner* v. *Mid-America Pipe Line Co.,* 490 U.S. 212, 224 (1989). Rather, once Congress, as in section 9, has made a proper delegation of authority to raise funds, ''so long as the fees in question are within the scope of Congress' lawful delegation of authority in section 9, they are constitutional.'' Id. Thus, as we noted in our FY 1995 *Report and Order,* we ''can collect fees from regulatees for their use of frequencies and for the potential benefits of regulatory activities, even if they do not utilize these activities.'' *See* 60 FR 34000, (June 29, 1995), citing *United States* v. *Sperry Corp.,* 493 U.S. 52, 63. Thus, there is no requirement that the fees we establish be designed to recover only the costs of those benefits directly received by an entity. Rather, we may adjust the fees by taking into consideration ''factors that the Commission determines are in the public interest.'' 47 U.S.C. 159(b)(1) (A).

16. We must collect in regulatory fees the amount specified by Congress. Direct costs, such as salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau, are only part of the costs to be recovered from each licensee. Indirect costs, which include costs of support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director, and support costs, including rent, utilities, equipment, and contractual costs attributable to regulatory oversight, must also be recovered.[3]

17. Regulatory fees also recover costs attributable to regulatees that Congress, has exempted from the fees, such as Citizen's Band Radio and most recreational ship and aircraft radio station operators, amateur radio licensees, governmental entities, licensees in the public safety radio services, and non-profit groups, as well as costs attributable to licensees which have been granted waivers of the fees. 47 U.S.C. 159(b)(d). The costs of regulating these entities is borne by those regulatees subject to a fee requirement, with no direct measurable benefit accruing to such fee payers. We recover our costs of regulation for exempt entities, and licensees who have received waivers of the fees by allocating our regulatory costs attributable to them on a proportional basis across all fee categories so as not to unduly impact any particular category of fee payers.

18. PCIA points out that our *NPRM* did not provide actual FY 1997 fee collection data, including the number of actual payment units and the actual amount of fees collected in certain fee categories. These commenters contend that such information is essential to the evaluation of the Commission's FY 1998 fee proposal and to insure that costs are properly allocated among all regulatees or licensees in a given service. We recognize that we did not provide a detailed listing of actual FY 1997 collections data in the *NPRM.* However, Attachment B, of the *NPRM,* contained a service-by-service explanation of the basis of our estimated FY 1998 payment units.

Several of these are based on actual FY 1997 payments. Others are based on estimates obtained from Commission program experts or from regulated industries. In any case, as we noted in the *NPRM,* we consider, as one factor in estimating payment units, the actual number of payment units recorded in our fees collection system for FY 1997. These payment unit estimates used ''as of'' dates corresponding to the beginning of the current fiscal year, or, for some fee categories, at the end of the previous calendar year. We believe that this reliance upon actual ''historical'' or retrospective FY 1997 data provides us a much greater confidence level than would an estimate of payment units made prospectively.[4] Finally, from the inception of the regulatory fee collection program, actual historical payment units and collection amounts for the various categories of services have been routinely available for inspection to interested persons upon request. In sum, we cannot find that there is a basis for concluding that these commenters could not fairly evaluate our proposed fees for FY 1998 given the information pertaining to payment units contained in the *NPRM* and detailed collections data readily available from the Commission. Additionally, we note that no interested party proposed alternative payment units for any category of service for FY 1998.

19. Finally, PCIA and other interested parties are concerned about the amount of the proposed increase in their revenue requirements and in their fee amounts for FY 1998 compared with those established for FY 1997. They question how estimates of actual costs for FY 1997 and FY 1998 could differ so significantly from one year to the next in certain fee categories. These differences can be attributed to the increase in the amount to be collected as specified by Congress, changes in the numbers of units subject to the fees, and changes in services. For example, in reassigning services from the CMRS Mobile category to the CMRS Messaging category, we adjusted the estimated payment units of both fee categories. Moreover, as we have noted, because each service must offset a portion of our overhead costs, and subsidize costs not related to its regulation, the resulting fee will invariably exceed the payer's direct regulatory costs, not withstanding the efforts by Congress and the Commission to reduce the regulatory burden on our licensees.

20. As noted in our FY 1997 *Report and Order,* an important consideration in utilizing a revenue ceiling is the impact on other fee payers. Because the Commission is required to collect a full $162,523,000 in FY 1998 regulatory fees, the additional revenue that would have been collected from licensees subject to a revenue ceiling had there been no ceiling, needs to be collected instead from licensees not subject to the ceiling. Revenues from current fee payers already offset costs attributable to regulatees exempt from payment of a fee or otherwise not subject to a fee pursuant to section 9(h) of the Act or the Commission's rules. For example, CB and ship radio station users, amateur radio licensees, governmental entities, licensees in the public safety radio services, and all non-profit groups are not required to pay a fee. The costs of regulating these entities is borne by those regulatees subject to a fee requirement. We believe, however, that the public interest is best served by this methodology. To do otherwise would subject payers in some fee categories to unexpected major fee increases which could severely impact the economic well being of certain licensees. Attachment E displays the step-by-step process we used to calculate adjusted revenue requirements for each fee category for FY 1998, including the reallocation of revenue requirements

[3] One commenter questioned how the Commission's use of contractors affected its computation of Full Time Equivalency (FTE) employee numbers. While the Commission used FTE numbers in developing its FY 1995 and FY 1996 fee schedules it discontinued using FTE numbers after it adopted a cost accounting system in FY 1997. PCIA also questions the allocation of such overhead costs as office moves. As with all overhead, we allocate it to the functional area where the cost was incurred, if this is feasible.

[4] In this regard the Commission has been checking the payments received from broadcast licensees against the name of the licensees in the Commission's database. The Commission has written to each licensee requesting payment or evidence of payment or exempt status, in order to perfect its database and ensure that the numbers of licensees upon which fees are based is accurate.

resulting from the application of our revenue ceilings.[5]

C. The 25% Ceiling on Fees

21. After separately projecting the revenue requirements for each service category using data generated by our cost accounting system, we established a revenue ceiling no higher than 25 percent above the revenue that regulatees would have paid if FY 1998 fees had remained at FY 1997 levels (adjusted only for changes in volume and the increase required by Congress).

22. SBC Communications (SBC) argues that the 25 percent ceiling is increasing the difference between the fees and the costs of regulation for some regulatees. Comcast Cellular Communications, Inc. (Comcast) and Small Business in Telecommunications (SBT) argue that the 25% ceiling unfairly results in the subsidization of some fee payer classes by other services.

23. Capping each fee category's revenue requirement at no more than a 25 percent increase enables us to continue the process of reducing fees for services with lower costs and increasing fees for services with higher costs in order to close the gap between actual costs and fees designed to recover these costs.[6] Congress in its original fee schedule, established fee amounts for each fee category that were to be used until the FCC could implement an agency-wide cost accounting system to track costs by fee category. The Congressional fee schedule inherently subsidized certain services at the expense of others. Furthermore, the Congressional mandate to collect significantly larger amounts in regulatory fees each year had made it more difficult to eliminate the imbalances first established in the statutory fee schedule. The full extent of these imbalances became clear when the Commission moved to a cost-based system in FY 1997. Thus, for FY 1997 we adopted a ceiling on fees in order to establish a mechanism that would smooth the transition to cost based fees.

24. As noted in our FY 1997 *Report and Order*, an important consideration in utilizing a revenue ceiling is the impact on other fee payers. We are required to collect a full $162,523,000 in FY 1998 regulatory fees. The additional revenue that would have been collected from licensees subject to a revenue ceiling had there been no ceiling, needs to be collected instead from services where increases are less than 25%. Utilization of the 25% ceiling permits us to close the gap between regulatory fees and actual costs while minimizing the potential adverse impact of substantial fee increases. In sum, we believe that the public interest is best served again by adopting the 25% ceiling.

C. Application of Cost-Based Methodology to Determine Fee Amounts

i. Adjustment of Payment Units

25. As the first step in calculating individual service regulatory fees for FY 1998, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1997 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates.[7] Attachment B provides a summary of how payment units were determined for each fee category.

ii. Calculation of Revenue Requirements

26. We next multiplied the revised payment units for each service by our FY 1997 fee amounts in each fee category to determine how much revenue we would collect in FY 1998 without any change to the existing Schedule of Regulatory Fees. The amount of revenue we would collect is approximately $171.5 million. This amount is approximately $9 million more than the amount the Commission is required to collect in FY 1998. We therefore adjusted the revenue requirements for each fee category on a proportional basis, consistent with section 9(b)(2) of the Act, to obtain an estimate of revenue requirements for each fee category necessary to collect the $162,523,000 amount required by Congress for FY 1998. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

iii. Calculation of Regulatory Costs

27. In order to utilize actual costs as derived from our accounting system we combined support costs and direct costs[8] and then adjusted the results to approximate the amount of revenue that Congress requires us to collect in FY 1998 ($162,523,000).[9] In effect, we proportionally adjusted the actual cost data pertaining to regulatory fee activities recorded for the period October 1, 1996, through September 30, 1997, (FY 1997) among all the fee categories so that total costs approximated $162,523,000. For fee categories where fees are further differentiated by sub-categories, we distributed the revenue requirements to each sub-category. The results of these calculations are shown in detail in Attachment D and represent our best estimate of actual total attributable costs relative to each fee category and sub-category for FY 1998. However, the fee schedule for AM and FM radio stations was differentiated by class of station and population served in such a manner as to further differentiate small stations from larger stations.

[5] For example, PCIA has requested that we establish a cost-increase benchmark at which point an explanation of the increase for any affected category must be included. A line-by-line explanation of all accounting data is not feasible, nor, do we believe, necessary in this item. Specific cost accounting data is available to interested parties upon request.

[6] We are not suggesting that fee increases are limited to a 25 percent increase over the FY 1997 fees. The 25 percent increase is over and above the *revenue* which would be required after adjusting for projected FY 1998 payment units and the proportional share of the 6.56 percent increase in the amount that Congress is requiring us to collect. Thus, FY 1998 fees may increase more than 25 percent over FY 1997 fees depending upon the number of payment units. We are also not suggesting that this methodology will always result in a continuous closing of an existing gap between costs and fees designed to recover these costs. Since actual costs for a fee category may increase or decrease in consecutive years, the gap could either close or widen depending upon whether or not actual costs go down or up and by how much.

[7] Certain payment unit estimates have been revised since release of the *NPRM* due to additional or updated information obtained by the Commission. This may result in changed fee amounts from those proposed in the *NPRM*. It is important to also note that Congress' required revenue increase in regulatory fee payments of approximately seven percent in FY 1998 will not fall equally on all fee payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

[8] One feature of the cost accounting system is that it separately identifies direct and indirect costs. Direct costs include salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau. These costs include rent, utilities and contractual costs attributable to such personnel. Indirect costs include support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director. The combining of direct and indirect costs is accomplished on a proportional basis among all fee categories as shown on Attachment D.

[9] Congress' estimate of costs to be recovered through regulatory fees is generally determined at least twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs will not equal exactly the amount Congress designates for collection in a particular fiscal year.

iv. Application of 25 Percent Revenue Ceiling

28. We applied the 25% ceiling on the increase in the revenue requirement of each fee category (over and above the Congressionally mandated increase in the overall revenue requirement and the difference in unit counts) using the same methodology we described in detail in our FY 1997 *Report and Order*.

v. Recalculation of Fees

29. Once we determined the amount of fee revenue that it is necessary to collect from each class of licensee, we divided the revenue requirement by the number of payment units (and by the license term, if applicable, for ''small'' fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(3) of the Act. *See* Attachment E.

vi. Proposed Changes to Fee Schedule

30. We examined the results of our calculations made in paragraphs 25–27 to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). As a result of this review, we are adopting the following changes to our Fee Schedule:

a. Commercial AM & FM Radio

31. In FY 1997 we revised the methodology for assessing radio regulatory fees, by determining each station's daytime protected field strength signal contour which was then overlaid upon U.S. Census data to estimate the population coverage for each station.[10] Under the FY 1997 methodology, stations with larger populations within their protected service area were assessed higher fees than stations with smaller populations within their protected service area. The FY 1997 radio regulatory fees were also based on the ratio between the differences in fees assessed for different classes of stations in the Statutory Fee Schedule. 47 U.S.C. 159(g). We will modify these procedures to assess regulatory fees by calculating the populations within each station's narrower city strength service contour. We anticipate that this methodology will reduce the populations to be considered for fee purposes to the populations which most licensees consider to be within their ''core'' service area. We also will increase the differences between fee payments for different classes of stations with different populations, so that stations serving larger populations would pay a greater share of the regulatory fee burden.

32. We received complaints from licensees stating that the protected field strength contours used to calculate the fees, overstated actual market areas and populations served. In several instances licensees contended that rural stations whose contours intersected major metropolitan areas, were assigned populations far in excess of the populations within their primary or even their secondary market areas. *See*, for example, letters from KTXC, dated September 10, 1997; Music Express Broadcasting Corporation of Northeast Ohio, dated August 28, 1997; and Martin Broadcasting Company, dated August 26, 1997.

33. We also received complaints from licensees that they could not determine how the size of their regulatory fees were affected by their class of station, and that there was not a sufficient differentiation in fees between stations serving large populations and other stations. Several licensees argue that stations serving smaller populations have paid a disproportionate share of the regulatory fees. *See* letter from Heckler Broadcasting, Inc., received October 2, 1997; and Petition for Reduction of Regulatory Fee filed September 18, 1997 by Family Communications, Inc.

34. Comments filed by 19 State Broadcaster Associations, and by the NAB support reliance on city grade contours, a fee schedule which separated stations by class and population, and a fee schedule that increased the differentiation between the fees paid by stations serving larger markets and by stations serving smaller markets. The NAB also maintained that specifically dividing stations by class and population will provide a greater understanding to individual licensees concerning how their fees were calculated. Finally, the NAB argued that it is inequitable to base fees on the number of licensees who have paid their fees in the past and, therefore, shifting the fee payment obligation from the number of licensees that did not pay their fees. The NAB urges the Commission to adopt a broadcast fee schedule based on the total number of operating stations, excluding only those stations that have documented non-profit status.

35. In part, as a response to these concerns and comments, the *NPRM* proposed to modify the fee schedule for FY 1998 by utilizing the same general methodology for determining regulatory fees as we did in FY 1997, but by increasing the strength of the applicable signal contours to 5 mV/m for AM radio stations and 70 dBuV/m for FM radio stations, their city strength service contours. The city strength signal contours should reduce the populations used to assess fees to the populations within each station's primary local market area.

36. The FY 1998 *NPRM* proposed alternative fee schedules. In the first schedule, we determined the population in each station's city strength service contours, and then multiplied each population served by the same ratios between the fees for individual classes and types of stations (AM or FM), as established in the original Statutory Fee Schedule to determine the weighted population for each station in the FY 1998 Fee Schedule. *See* 47 U.S.C. 159(g). We then proposed to combine all of the AM and FM stations into a single schedule. We developed a range of fees for the schedule by selecting a minimum fee not lower than the AM Construction Permit fee which we determined to be $235, and a maximum fee which would not place an undue burden on any licensee. Therefore, we proposed to set the lowest radio fee at $250, and to increase the fees in $250 increments to $2,500 for stations serving the largest populations. We further proposed to retain the same number of actual fee classifications (ten) as in our FY 1997 *Report and Order*.[11]

37. We agree with the NAB and the State Broadcaster Associations that separately listing AM and FM stations by class of station, and by increasing the burden to be paid by the stations serving larger populations, is more equitable. Although that schedule would depart from the original ratios in the statutory fee schedule, we are authorized to modify the schedule and implement the following schedule which is responsive to the concerns expressed by our licensees. 47 U.S.C. 159(b).

[10] In FY 1997 we determined that the signal contour for AM radio stations would be based upon a calculated signal strength of 0.5 mV/m from the transmitter location. For Class B FM stations the contour was based upon a signal strength of 54 dBuV/m from the transmitter location and for Class B1 FM stations the contour was based upon a signal strength of 57 dBuV/m. For all other FM Classes, a 60 dBuV/m contour was used. Attachment J describes in detail the factors, measurements and calculations that go into determining station signal contours and associated population coverages.

[11] The number of stations is not exactly divisible by 10, leaving group 10 with five less stations than the other groups.

RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<=20,000	$400	$300	$200	$250	$300	$400
20,001–50,000	750	600	300	400	600	750
50,001–125,000	1,250	800	400	600	800	1,250
125,001–400,000	1,750	1,250	600	750	1,250	1,750
400,001–1,000,000	2,500	2,000	1,000	1,250	2,000	2,500
>1,000,000	4,000	3,250	1,500	2,000	3,250	4,000

38. As can be seen from the above chart, the same class stations in different size cities generally have different fees, with stations serving larger populations paying higher fees. In addition, different class stations in the same city generally have different fees, with stations which provide a higher class of service paying higher fees. The same class stations in the same city will have the same fee. Thus, the adopted fee schedule achieves the objectives of assessing fees based on class of station and populations served, thereby providing a fair and equitable means of distinguishing between stations located in metropolitan areas and in rural areas.

39. Moreover, if a licensee believes that it has been improperly placed in a particular fee classification group or that it will suffer undue financial hardship from the fee assessment, our rules provide for waiver, reduction or deferral of a fee as described in § 1.1166 of our rules. *See* 47 CFR 1.1166.

40. We also agree with the NAB that the fee schedule should reflect the total number of non-exempt operating stations. We have identified those licensees who have not paid their regulatory fees and have requested that they pay the fee or submit evidence establishing that they have paid their fee or are entitled to an exemption from the regulatory fee. In addition, in *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, FCC 97–384, adopted October 17, 1997, we required licensees to submit evidence of their non-profit status. For FY 1998, we have made adjustments to the number of licensees subject to fee payment based on responses received pertaining to non-profit status. Further, for FY 1999, we will consider the number of licensees who have paid their fees, as adjusted to account for licensees that have established their exempt status, and to account for responses to our letters requesting fee payments. Moreover, it is our intention to follow up on the FY 1998 fee payments to again identify and collect fees from those licensees that have not paid their fees and to further adjust and perfect our station counts.

41. The Commission will again inform radio station licensees of their exact fee obligation. A Public Notice listing each station's call letters, location, population, and the required fee will be mailed to each licensee. The same information will also be available at our internet web site (http://www.fcc.gov). Interested parties may also obtain their applicable fee amount for FY 1998 by calling the FCC's National Call Center at 1–888–225–5322. We have also provided detailed payment information for each radio station as Attachment L to this *Report and Order*.

b. CMRS

42. In the *NPRM*, we proposed for FY 1998 fees of $.29 per unit for the CMRS Mobile Service and $.04 per unit for the CMRS Messaging Service. In addition, we sought comment on how best to assign the various CMRS services between the two fee categories. For FY 1997, licensees authorized for operation on broadband spectrum were subject to payment of the CMRS Mobile Service fee and licensees authorized for operation on narrowband spectrum were subject to payment of the CMRS Messaging fee without regard to the nature of the services actually offered. We invited interested parties to comment on our proposal to continue the FY 1998 fee structure, and we specifically invited comments on whether licensees in the 900 MHZ Specialized Mobile Radio (SMR) Service were properly included in the CMRS Mobile fee category. Further, we tentatively proposed to include the Wireless Communications Service in the CMRS Wireless fee category.

43. Several interested parties filed comments, in particular, concerning the demarcation between the CMRS Mobile and CMRS Messaging fee categories. SBC Communications Inc. (SBC) urges us to adopt only a single CMRS fee covering all CMRS services contending that both Congress and the Commission intended in establishing SMRS to create regulatory symmetry among the CMRS services and, thereby, avoid any competitive advantage to narrowband PCS and SMR Services over Cellular and broadband PCS.[12] In contrast, Paging Network, Inc. (Pagenet) supports retention of the existing fee category structure, but recommends adoption of a subcategory for non-voice networks and services within the CMRS Mobile Service fee category which would be subject to the same fee payment as licensees within the CMRS Messaging fee category.

44. Bell South, a provider of mobile wireless data, supported by American Mobile Telecommunications Association (AMTA), suggests that 900 MHZ SMR licensees should be classified in the CMRS Messaging Fee category not the CMRS Mobile Services Category. BellSouth WD argues that regulatory fees should be governed by how the service bands are predominantly used. BellSouth WD states that the Commission has allocated 5 MHz of spectrum in each geographic region for 900 MHz SMR systems and that, in practice, this spectrum is licensed in 20 blocks, each consisting of 10 two-way 12.5 KHz paths, or 0.25 MHz per ten-channel block.[13] Further, Bell South contends that 900 MHz SMRs do not have the capacity to compete with true broadband systems, lacking the amount of spectrum of those services included in the CMRS Mobile Fee category. Thus, Bell South WD suggests that we either include any license authorization providing 25 KHz or less spectrum in the CMRS Messaging Service category or that we establish a third CMRS fee payment category for systems that operate in the 900 MHz SMR band and other services that are allocated no more than 5 MHz of spectrum. Small Business in Telecommunications (SBT), representing several SMR licensees, argues that, because we classified narrowband PCS, which operates on 50 KHz paired channels, in the CMRS

[12] *Id.*

[13] *See* BellSouth WD Comments at 2.

Messaging Service category,[14] we should clarify that all CMRS stations which are authorized with channel bandwidth not exceeding 50 KHz are within the CMRS Messaging Service category.

45. Moreover, SBT contends that we should clarify that SMR systems and Public Coast stations are within the CMRS Messaging Fees category since these stations are authorized with substantially less channel capacity than narrowband PCS stations. SBT also believes that SMR licensees, which are small businesses should receive discounts on their fees similar to the discounts given to small businesses in spectrum auctions. AMTA also supports relief for small businesses. SBC also contends that we incorrectly included the Rural Radio Service and the Basic Exchange Telecommunications Radio Service (BETRS) in the CMRS fee category.

46. We decline to adopt suggestions to base our fees on the predominant use of assigned spectrum and on a licensee by licensee basis. We are aware of no existing records or other information that would permit development of a sub-category of CMRS Mobile Services for those CMRS licensees who use broadband spectrum to deliver CMRS Messaging Services. Thus, adoption of those proposals could impose upon the licensees themselves and our staff an undue expenditure of administrative resources in the course of preparing the fee payments and processing them.

47. Furthermore, we reject SBC's contention that all CMRS licensees should pay the same regulatory fee. The statutory fee schedule makes plain that Congress in enacting the regulatory fee program contemplated that our fee levels would recognize the benefit of the spectrum authorized to licensees in the various services. 47 U.S.C. 159(g). Furthermore, interested parties should note that in the past our CMRS fee schedules have adhered to Congress' principle that our fee categories are to be based on the authorization provided to a licensee rather than the use a particular licensee makes of its authorized spectrum. Thus, we have considered the nature of the services offered only to the extent that service offered on broadband spectrum and services offered on narrowband spectrum are subject to different categories of fee payment.

48. While, at this time, we lack an adequate record to modify classifications within the CMRS fee category, we intend to adopt shortly a *Notice of Inquiry* to seek comment on revisiting several of our regulatory fee categories, including CMRS. We encourage CMRS licensees to participate in that proceeding by submitting comments and supporting data.

49. Finally, we did not receive any comments opposing our tentative conclusion that the Wireless Communications Service (WCS) should be classified as a CMRS Mobile Service and, therefore, we will classify WCS as service within the CMRS Mobile Service fee category. Also, we agree with SBC that § 20.7(a) of the rules excludes licensees in the Rural Radio Service from CMRS. Therefore, licensees in this Service shall pay annual regulatory fees under the category, GMRS/Other Land Mobile. For FY 1998, the GMRS/Other Land Mobile fee is $6 per license, payable in advance for the entire license term and at the time of application for a new, modification or reinstatement license. The total regulatory fee due is $30 for a five-year license term.

c. Space Stations and Bearer Circuits

i. Geostationary Satellites

50. For FY 1997 and prior years, we have adopted the statutory fee schedule's ''per satellite'' method for assessment of fees upon licensees of space stations. 47 U.S.C. 159(g). In the *NPRM*, we proposed retaining this approach. *See* FY 1998 *NPRM*, Attachment F. Columbia asks that we modify our methodology to take into account the difference between transponder and bandwidth capacity that exists among different satellites. Columbia states that its satellites are limited to just twelve C-band transponders, which, it contends, is only about one-third the capacity of the typical geostationary satellite. Further, it argues that satellite operators benefit from our regulation in close proportion to its capacity because a satellite's commercial capacity dictates the benefit it receives from our regulation, i.e., its ability to generate income. Thus, Columbia suggests that we base the space station fees on the transponder capacity of each satellite measured in 36 MHZ equivalent circuits.

51. Both GE Americom and Lorel contend that the Commission engages in little oversight once a satellite is licensed and that application processing costs should not be included in the regulatory fee schedule. The costs attributed to the regulation of geostationary satellites are based on the Commission's cost accounting system which separates application processing costs from regulatory costs.

52. Finally, GE Americom and others contend that any costs related to the development of new services rather than existing services should be treated as overhead and recovered proportionately from all fee payers. They also state that high regulatory fees adversely affect the U.S. satellite industry's capability to compete with foreign licensed companies. We continue to believe that it would be inappropriate to transfer costs directly attributable to one industry group to other unrelated industries or groups. Benefits need not be received or used by a particular licensee to satisfy the ''reasonably related'' criteria. It is enough that the benefits are available to all. The FCC, by statute, may only regulate costs of domestic licensed companies and we do not believe that our regulatory fees substantially affect American companies ability to compete with foreign entities.

53. After a careful review of the arguments, we have concluded that due to the tight collection schedule we face at this point, as a practical matter, we have no viable alternative other than adoption of the fee as proposed in the *NPRM*. Our action today is not intended to prejudge any pending waiver applications regarding these fees. Moreover, since the calculation of annual regulatory fees for geostationary satellites has been a matter of dispute for several years, we will soon issue a *Notice of Inquiry* which will entertain suggestions for alternative approaches based on different criteria and information. We will also ask the satellite industry to specify the data upon which we can base each alternative approach and the most feasible method for obtaining this information.

ii. Non-Geostationary Satellites

54. In the *NPRM*, we proposed to revise the fee payment requirement for non-geostationary satellite systems by requiring a fee payment ''upon the commencement of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e) 25.145(g) or upon certification of operation of a single satellite pursuant to § 25.120(d).''[15] *See NPRM* at paragarph 32. In its comments, ORBCOMM contends that we should recover our non-geostationary space station regulatory costs from all non-geostationary satellite licensees rather than only those that have launched their initial satellites because all licensees benefit from our policy, enforcement and information activities and services.

55. In the past, we have not assessed fees upon licensees of LEO systems that

[14] *See* FY 1997 Fees Order at paragraph 61.

[15] Section 25,120(d) has been renumbered to § 25.121(d).

do not operate at least one in-orbit space station. Nevertheless, we believe that ORBCOMM's proposal to impose a fee on all licensees of LEO systems warrants consideration due to developments in satellite technology permitting the deployment of LEO systems containing large numbers of satellites. However, before further considering the proposal, we believe an opportunity for comments by the interested parties would be useful. Therefore, we adopt the fee as proposed in the *NPRM*. Nevertheless, we will include ORBCOMM's proposal in the *Notice of Inquiry* we will initiate to review various methodologies for assessing fees in various fee categories. This will provide an opportunity to fully explore this proposal with input from all affected parties.

56. Finally, we will adopt the *NPRM's* proposal to reclassify the LEO regulatory fee category as the ''Space Stations (Non-geostationary)'' fee category because advances in satellite technology have made possible medium and high orbit satellite systems operating in non-geostationary orbits. *See NPRM* at paragraph 33.

iii. Bearer Circuits

57. For FY 1997, for the first time, we applied the international bearer circuit fee to satellite non-common carriers providing international bearer circuits to end users. *See* FY 1997 *Report and Order* at paragraphs 66–72. Previously, we had assessed the bearer circuit fee only upon undersea cable operators and domestic and international common carriers. In the *NPRM*, we proposed to again assess the bearer circuit fee on both private and common carrier satellite providers of international bearer circuits to end users. *See* FY 1998 *NPRM*, Attachment F.

58. Columbia, Loral, and PanAmSat contend that assessment of the bearer circuit fee on private satellite providers of international bearer circuits is unlawful. These parties state that section 9(g) of the Communications Act specifically limits the assessment of the bearer circuit fee to ''carriers''. 47 U.S.C. 159(g). Because section 3(10) of the Act defines ''carriers'' as ''common carriers'', they contend that we are limited to imposing the fee only on common carriers providing international bearer circuits. 47 U.S.C. 153(10). In addition, according to Columbia, the intent of Congress in including the bearer circuit fee in its statutory fee schedule was to assure the recovery from common carriers of the cost of their Title II regulation. Because non-common carriers are not subject to Title II regulation, Columbia argues that imposition of the bearer circuit fee on non-common carriers would result in recovery of the costs of Title II regulation from entities not subject to our Title II jurisdiction.

59. As a separate matter, PanAmSat states that our justification underlying imposition of the FY 1997 bearer fee upon non-common carrier satellite providers was flawed because we mistakenly believed that non-common carrier satellite operators would offer interconnected PSTN services in competition with common carriers following our elimination of the *de jure* prohibition on non-common carriers for the provision of these services. *See* FY 1997 *Report and Order* at paragraph 71. Instead, PanAmSat contends that the record in the pending *Comsat Dominance* proceeding demonstrates that the amount of PSTN traffic actually carried by non-common carrier satellites is so small as to be inconsequential from a competitive point of view. *See* 60–SAT–ISP–97. Thus, PanAmSat, supported by Columbia and Loral, argues that there has been no change in our regulation of non-common carriers to justify, pursuant to section 9(b)(3), subjecting non-common carrier satellites providers to a new fee. 47 U.S.C. 159(b)(3).

60. Finally, PanAmSat contends that to assess non-common carrier satellite operators the international bearer circuit fee will create a competitive disparity. PanAmSat states that under our *DISCO II* policies, foreign-licensed satellites now may be used to provide satellite service in the United States. Foreign satellite operators are not, however, required to pay regulatory fees. *See* 12 FCC Rcd 24094 (1997). As a result, the satellite systems against which U.S.-licensed non-common carriers actually compete will have a competitive advantage solely as a result of having used a foreign licensing administration. In sum, PanAmSat asks that we not impose the bearer circuit fee on non-common carrier satellite operators in order to avoid skewing competition in the telecommunications markets by unfairly discriminating against U.S.-licensed service providers.

61. We disagree with Columbia, Loral and PanAmSat that our assessment of the bearer circuit regulatory fee on them is unlawful. First, we disagree with their assertion that the intent of Congress in enacting section 9 of the Communications Act, under which the Commission is required to collect annual regulatory fees, including the bearer circuit fee at issue here, was to recover the costs of regulating common carriers under Title II of the Act. Section 9(a) clearly states that the purpose of the regulatory fees is to recover the costs of the Commission's enforcement activities, policy and rulemaking activities, user information services and international activities. Section 9(a) does not mention carriers or non-carriers or impose different criteria for each. Rather, the section requires the Commission to collect fees designed to recover its costs for these four general activities and to collect those fees from all entities that either require the Commission to engage in those activities or who benefit from them. As we noted in our FY 1997 *Report and Order* the Commission's costs for Title II regulation are recovered from the application fees under section 8 of the Communications Act.

62. We further disagree with the argument of PanAmSat that our argument for recovering bearer circuit fees from non-carrier providers of such circuits is flawed. We see nothing in section 9 that would specifically exempt non-carriers from paying fees under section 9. While we agree that the Schedule of Regulatory Fees included in section 9(g) states that we should impose bearer circuit fees upon ''carriers,'' [16] and that section 3(10) of the Act defines ''carriers'' to mean ''common carriers,'' [17] that is not the end of the issue. Section 9(b)(3) empowers the Commission to amend the Schedule of Regulatory Fees if the Commission deems such amendment necessary in the public interest.[18] In our 1997 *Report and Order* we amended the schedule of regulatory fees to impose them upon non-carrier operators of international satellite systems under the terms of section 9(g)(3). The basis for this amendment was that the non-carrier system operators had sought and obtained a significant expansion of the scope of services they are permitted to offer.[19]

Our *DISCO II* Order also allowed them to provide unlimited domestic service,[20] thereby increasing their permitted service areas. Because of these changes in their operation the non-carrier operators of international satellite systems impose more burdens upon the Commission's regulatory staff and derive a greater benefit from such staff's activities, particularly its international representation functions.

[16] 47 U.S.C. 159(g).

[17] 47 U.S.C. 153(10).

[18] 47 U.S.C. 159(g)(3).

[19] *See* FCC 97–295 at paragraph 71, June 26, 1997.

[20] *See* 63 FR 6496 (February 9, 1997). Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *Report and Order* in IB Docket No. 96–111, 12 FCC Rcd 24094 (1997), 62 FR 64167 (December 4, 1997).

We concluded, therefore, that it would be appropriate to begin to collect regulatory fees from such operators.

63. The commenting parties do not directly challenge the conclusions of our FY 1997 *Report and Order.* At most, PanAmSat argues that we may have overestimated the number of circuits such entities interconnect to the public switched telephone network (PSTN) and that the number is actually ''competitively inconsequential.'' Our decision, however, was not solely based upon the connection of circuits to the PSTN. The non-carrier international satellite operators have become substantial providers of international private-line circuits. Such circuits are international bearer circuits, whether or not they are interconnected to the PSTN. They offer substantial competition to carrier offerings of international bearer circuits. Commission staff has also spent considerable time representing non-carrier satellite operators in international forums. Therefore, we continue to believe that our regulation of these entities has sufficiently changed so that it is now appropriate for them to contribute to the recovery of Commission costs through payment of the bearer circuit fee. Finally, we find no merit in PanAmSat's argument that our imposition of bearer circuit fees on U.S.-licensed satellite systems discriminates in favor of foreign-owned systems. Congress requires the Commission to recover regulatory fees from firms who are subject to the Commission's regulatory jurisdiction. Foreign-licensed satellite systems do not fall within Commission jurisdiction. Therefore, they neither directly impose burdens on the Commission's staff nor receive benefits from Commission representation in international fora.

d. Interstate Telephone Service Providers

64. In the *NPRM,* we proposed to adopt the methodology for assessing fees upon Interstate Telephone Service Providers that we had employed in past years. Under this methodology, carriers calculate their fees based upon their proportionate share of interstate revenues using the methodology we developed for contribution to the TRS Fund. *See Telecommunications Relay Services,* 8 FCC Rcd 5300 (1993). However, in order to avoid imposing upon resellers a double fee payment, we permit carriers to remove from their gross interstate revenue payments made to underlying carriers for telecommunications facilities and services, including payments for interstate access services.

65. SBC contends that our methodology imposes an undue burden upon the LECs because we permit interexchange carriers (IXCs) to deduct payments made to underlying common carriers from their gross revenues while local exchange carriers (LECs) do not have such payments to deduct. SBC suggests that use of end user revenues—the same contribution base used for Universal Service—to develop the annual fees would alleviate that burden and be more competitively neutral.

66. We find merit to SBC's proposal and, indeed, we have previously recognized administrative advantages to using end user revenues as opposed to net revenues when assessing carrier contributions.[21] However, SBC is mistaken in describing end user revenues as more competitively neutral than the mechanism we have proposed. Assuming that all fees are recovered from customers, including carrier customers that purchase their service for resale, retail customers would still pay the same rates. Further, to the extent that SBC provides services in competition with other carriers, those carriers would pay the same percentage amounts as SBC when providing the same services to the same customers. Since modifying the fee basis would not result in any material difference in the rates that consumers pay, we cannot conclude that the LEC's pay an undue share under our proposed methodology.

67. Interested parties should note that we are adopting our net revenue methodology as the fee basis for the Interstate Telephone Service Providers fee category again this year, in part, because we do not yet have adequate data to estimate total common carrier interstate end user revenue for FY 1997. While we could make such an estimate using data available for the first half of FY 1997 based on USF filings submitted on September 1, 1997, we believe that for FY 1998 we can make a better calculation of net revenues using historic data from regulatory fees as well as published gross revenue data based on TRS Fund filings. Thus, we expect to revisit SBC's proposal in the course of developing our regulatory fees for FY 1999.

E. Schedule of Regulatory Fees

68. The Commission's Schedule of Regulatory Fees for FY 1998 is contained in Attachment F of this *Report and Order.*

F. Effect of Revenue Redistributions on Major Constituencies

69. The chart below illustrates the relative percentages of the revenue requirements borne by major constituencies since inception of regulatory fees in FY 1994.

REVENUE REQUIREMENT PERCENTAGES BY CONSTITUENCIES

	FY 1994 (actual)	FY 1995 (actual)	FY 1996 (actual)	FY 1997 (actual)	FY 1998 (proposal)
Cable TV Operators(Inc. CARS Licenses)	41.4	24.0	33.4	21.8	18.1
Broadcast Licensees	23.8	13.8	14.6	14.1	15.3
Satellite Operators (Inc. Earth Stations)	3.3	3.6	4.0	5.0	5.0
Common Carriers	25.0	44.5	40.9	49.8	47.8
Wireless Licensees	6.5	14.1	7.1	9.3	13.8
Total	100.0	100.0	100.0	100.0	100.0

G. Procedures for Payment of Regulatory Fees

i. Installment Payments for Large Fees

70. Generally, we are retaining the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit ''payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer.'' *See* 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1)

[21] *Federal-State Joint Board on Universal Service, Report and Order,* FCC 97–157, CC Docket No. 96–45, 12 FCC Rcd 8776, 9206–9209 (rel. May 8, 1997) (Universal Service Order).

''standard'' fees, (2) ''large'' fees, and (3) ''small'' fees.

71. We proposed in the *NPRM* that regulatees in any category of service with a liability of $12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. However, statutory constraints requiring notification to Congress prior to actual collection of the fees prevents us from allowing installment payments in FY 1998. The payment dates for each regulatory fee category will be announced by Public Notice and published in the **Federal Register** following termination of this proceeding. However, regulatees otherwise eligible to make installment payments may pay their fees on the last date that fee payments may be submitted, as established in our Public Notice.

ii. Annual Payments of Standard Fees

72. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. As in the past, all standard fees will be payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced by Public Notice and published in the **Federal Register** following termination of this proceeding.

iii. Advance Payment of Small Fees

73. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as ''small'' fees subject to advance payment consistent with the requirements of section 9(f)(2). Advance payments will be required from licensees of those services that we identified would be subject to advance payments in our FY 1994 *Report and Order,* and to those additional payers set forth herein. [22] Payers of small fees must submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date of the FY 1998 small fees will be announced by Public Notice and published in the **Federal Register** following termination of this proceeding.

iv. Standard Fee Calculations and Payment Dates

74. As noted, the time for payment of standard fees will be published in the **Federal Register**. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media and Cable Services, fees should be submitted for any authorization held as of *October 1, 1997*. As in the past, this is the date to be used for establishing liability for payment of these fees since it is the first day of the federal government's fiscal year.

75. In the case of other regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on *December 31, 1997,* will be used to calculate the fee payment.[23] As in the past, we have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.

v. Minimum Fee Payment Liability

76. Regulatees whose total fee liability amounts to less than $10, including all categories of fees for which payment is due by an entity, are exempted from fee payment in FY 1998.

IV. Ordering Clause

77. Accordingly, it is ordered that the rule changes specified herein are adopted. It is further ordered that the rule changes made herein will become effective 60 days from date of publication in the **Federal Register**, except that changes to the Schedule of Regulatory Fees, made pursuant to section 9(b)(3) of the Communications Act, and incorporating regulatory fees for FY 1998, will become effective September 13, 1998, which is 90 days from the date of notification to Congress. Finally, it is ordered that this proceeding is *Terminated.*

V. Authority and Further Information

78. This action is taken pursuant to sections 4(i), 4(j), 9 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j) and 9 and 303(r).

79. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418–0192.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications, Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154 (j), 155 225, and 303(r).

2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

[22] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS). In addition, applicants for Amateur Radio Vanity Call Signs will be required to submit an advance payment.

[23] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers= Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on ''a typical day in the last full week'' of December 1996, rather than on a count as of December 31, 1996.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz, Base Station & SMRS)(47 CFR, Part 90):		
(a) 800 MHz, New, Renewal, Reinstatement (FCC 600)	$12.00	FCC, 800 MHz, PO Box 358235, Pittsburgh, PA 15251–5235.
(b) 900 MHz, New, Renewal, Reinstatement (FCC 600)	12.00	FCC, 900 MHz, PO Box 358240, Pittsburgh, PA 15251–5240.
(c) 470–512,800,900, 220 MHz, 220 MHz Nationwide Renewal (FCC 574R, FCC 405A).	12.00	FCC, 470–512, PO Box 358245, Pittsburgh, PA 15251–5245.
(d) Correspondence, Blanket Renewal, (470–512,800,900,220 MHz) (Remittance Advice, Correspondence).	12.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251–5305.
(e) 220 MHz, New, Renewal, Reinstatement (FCC 600)	12.00	FCC, 220 MHz, PO Box 358360, Pittsburgh, PA 15251–5360.
(f) 470–512 MHz, New, Renewal, PO Box 358810, Reinstatement (FCC 600).	12.00	FCC, 470–512, Pittsburgh, PA 15251–5810.
(g) 220 MHz Nationwide, New, Renewal, Reinstatement (FCC 600).	12.00	FCC, Nationwide, PO Box 358820, Pittsburgh, PA 15251–5820.
2. Microwave (47 CFR Pt. 101):		
(a) Microwave, New, Renewal, Reinstatement (FCC 415) ...	12.00	FCC, Microwave, PO Box 358250, Pittsburgh, PA 15251–5250.
(b) Microwave, Renewal (FCC 402R)	12.00	FCC, Microwave, PO Box 358255, Pittsburgh, PA 15251–5255.
(c) Correspondence, Blanket Renewal (Microwave) (Remittance Advice, Correspondence).	12.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251–5305.
3. Shared Use Services:		
(a) Land Transportation (LT), New, Renewal, Reinstatement (FCC 600).	6.00	FCC, Land Trans., PO Box 358215, Pittsburgh, PA 15251–5215.
(b) Business (Bus.), New, Renewal, Reinstatement (FCC 600).	6.00	FCC, Business, PO Box 358220, Pittsburgh, PA 15251–5220.
(c) Other Industrial (OI), New, Renewal, Reinstatement (FCC 600).	6.00	FCC, Other Indus., PO Box 358225 Pittsburgh, PA 15251–5225.
(d) General Mobile Radio, Service (GMRS) New, Renewal, Reinstatement (FCC 574).	6.00	FCC, GMRS, PO Box 358230, Pittsburgh, PA 15251–5230.
(e) Business, Other Industrial, Land Transportation, GMRS, Renewal (FCC 574R, FCC 405A).	6.00	FCC, Bus., OI, LT, GMRS, PO Box 358245 Pittsburgh, PA 15251–5245.
(f) Ground, New, Renewal, Reinstatement (FCC 406)	6.00	FCC, Ground, PO Box 358260, Pittsburgh, PA 15251–5260.
(g) Coast, New, Renewal, Reinstatement (FCC 503)	6.00	FCC, Coast, PO Box 358265, Pittsburgh, PA 15251–5265.
(h) Ground, Renewal (FCC 452R)	6.00	FCC, Ground, PO Box 358270, Pittsburgh, PA 15251–5270.
(i) Coast, FCC, Coast Renewal (FCC 452R)	6.00	PO Box 358270, Pittsburgh, PA 15251–5270.
(j) Ship, New, Renewal, Reinstatement (FCC 506)	6.00	FCC, Ship, PO Box 358275, Pittsburgh, PA 15251–5275.
(k) Aircraft, New, Renewal, Reinstatement (FCC 404)	6.00	FCC, Aircraft, PO Box 358280, Pittsburgh, PA 15251–5280.
(l) Ship, Renewal (FCC 405B)	6.00	FCC, Ship, PO Box 358290, Pittsburgh, PA 15251–5290.
(m) Aircraft, Renewal (FCC 405B)	6.00	FCC, Aircraft, PO Box 358290, Pittsburgh, PA 15251–5290.
(n) Correspondence, Blanket Renewal (Bus.,OI,LT,GMRS) (Remittance Advice, Correspondence).	6.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251–5305.
(o) Correspondence, Blanket Renewal (Ground) (Remittance Advice, Correspondence).	6.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251–5305.
(p) Correspondence, Blanket Renewal (Coast) (Remittance Advice, Correspondence).	6.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251–5305.
(q) Correspondence, Blanket Renewal (Aircraft) (Remittance Advice, Correspondence).	6.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251–5305.
(r) Correspondence, Blanket Renewal (Ship) (Remittance Advice, Correspondence).	6.00	FCC, Corres., PO Box 358305, Pittsburgh, PA 15251–5305.
4. Amateur Vanity Call Signs	1.30	FCC, Amateur Vanity, PO Box 358924, Pittsburgh, PA 15251–5924.
5. CMRS Mobile Services (per unit)	.29	FCC, Cellular, PO Box 358835, Pittsburgh, PA 15251–5835.
6. CMRS Messaging Services (per unit)	.04	FCC, Messaging, PO Box 358835, Pittsburgh, PA 15251–5835.

[1] Note that ''small fees'' are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owned. It should be further noted that application fees may also apply as detailed in 1.1102 of this chapter.

3. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
I. Radio [AM and FM] (47 CFR, Part 73):		
1. AM Class A		
(a) <=20,000 population	400	FCC, Radio, PO Box 358835, Pittsburgh, PA 15251–5835.
(b) 20,001–50,000 population	750	
(c) 50,001–125,000 population	1,250	
(d) 125,001–400,000 population	1,750	
(e) 400,001–1,000,000 population	2,500	
(f) >1,000,000 population	4,000	
2. AM Class B		
(a) <=20,000 population	300	
(b) 20,001–50,000 population	750	
(c) 50,001–125,000 population	800	
(d) 125,001–400,000 population	1,250	

	Fee amount	Address
(e) 400,001–1,000,000 population	2,000	
(f) >1,000,000 population	3,250	
3. AM Class C		
(a) <=20,000 population	200	
(b) 20,001–50,000 population	300	
(c) 50,001–125,000 population	400	
(d) 125,001–400,000 population	600	
(e) 400,001–1,000,000 population	1,000	
(f) >1,000,000 population	1,500	
4. AM Class D		
(a) <=20,000 population	250	
(b) 20,001–50,000 population	400	
(c) 50,001–125,000 population	600	
(d) 125,001–400,000 population	750	
(e) 400,001–1,000,000 population	1,250	
(f) >1,000,000 population	2,000	
5. AM Construction Permit	235	
6. FM Classes A, B1 and C3		
(a) <=20,000 population	300	
(b) 20,001–50,000 population	600	
(c) 50,001–125,000 population	800	
(d) 125,001–400,000 population	1,250	
(e) 400,001–1,000,000 population	2,000	
(f) >1,000,000 population	3,250	
7. FM Classes B, C, C1 and C2		
(a)<=20,000 population	400	
(b) 20,001–50,000 population	750	
(c) 50,001–125,000 population	1,250	
(d) 125,001–400,000 population	1,750	
(e) 400,001–1,000,000 population	2,500	
(f) >,000,000 population	4,000	
8. FM Construction Permits	1,150	
II. TV (47 CFR, Part 73) VHF Commercial:		
1. Markets 1 thru 10	37,575	FCC, TV Branch, PO Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25	31,275	
3. Markets 26 thru 50	21,400	
4. Markets 51 thru 100	11,975	
5. Remaining Markets	3,100	
6. Construction Permits	2,525	
III. TV (47 CFR, Part 73) UHF Commercial:		
1. Markets 1 thru 10	14,175	FCC, UHF Commercial, PO Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25	10,725	
3. Markets 26 thru 50	6,650	
4. Markets 51 thru 100	3,975	
5. Remaining Markets	1,075	
6. Construction Permits	2,650	
IV. Satellite UHF/VHF Commercial:		
1. All Markets	1,175	FCC Satellite TV PO Box 358835, Pittsburgh, PA 15251–5835.
2. Construction Permits	420	
V. Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR, Part 74).	265	FCC, Low Power PO Box 358835, Pittsburgh, PA 15251–5835.
VI. Broadcast Auxiliary	11	FCC, Auxiliary, PO Box 358835, Pittsburgh, PA 15251–5835.
VII. Multipoint Distribution	260	FCC, Multipoint, PO Box 358835, Pittsburgh, PA 15251–5835.

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
I. Radio Facilities:		
1. Microwave (Domestic Public Fixed)	$12	FCC, Common Carrier, P.O. Box 358680, Pittsburgh, PA 15251–5680.
II. Carriers:		
1. Interstate Telephone Service Providers (per dollar contributed to TRS Fund).	.0011	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5680.

5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Antenna Relay Service	$50	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251–5835.

	Fee amount	Address
2. Cable TV System (per subscriber)	.44	

6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
I. Radio Facilities:		
1. International (HF) Broadcast	$475	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. International Public Fixed	375	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
II. Space Stations (Geostationary Orbit)	119,000	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
III. Space Stations (Non-Geostationary Orbit)	164,800	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
IV. Earth Stations, Transmit/Receive & Transmit Only (per authorization or registration).	165	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA 15251–5835.
V. Carriers:		
1. International Bearer Circuits (per active 64KB circuit or equivalent).	6.00	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.

Attachment A—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[24-25] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1998,* 63 FR 16188 (April 2, 1998). The Commission sought written public comments on the proposals in its FY 1998 regulatory fees *NPRM,* including on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.[26]

I. Need for and Objectives of this Report and Order

2. This rulemaking proceeding was initiated in order to collect regulatory fees in the amount of $162,523,000, the amount that Congress has required the Commission to recover through regulatory fees in FY 1998. The Commission seeks to collect the necessary amount through its revised regulatory fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

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

3. None.

III. Description and Estimate of the Number of Small Entities to Which the Rules will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[27] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [28] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[29] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[30] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [31] Nationwide, as of 1992, there were approximately 275,801 small organizations.[32] ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' [33] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[34] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[35] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[36] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay

[24-25] U.S.C. 603.

[26] *See* 5 U.S.C. 604. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract with America Advancement Act (CWAAA), Pub. L. 104–121, 110 Stat. 847 (1996). Title II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA).

[27] 5 U.S.C. 603(b)(3).

[28] *Id.* section 601(6).

[29] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. 5 U.S.C. 601(3).

[30] Small Business Act, 15 U.S.C. 632 (1996).

[31] 5 U.S.C. 601(4).

[32] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[33] 5 U.S.C. 601(5).

[34] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[35] *Id.*

[36] 13 CFR 121.201, SIC code 4841.

television services and 1,423 had less than $11 million in revenue.[37]

6. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[38] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[39] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [40] The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[41] Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450.[42] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[43] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 66,000,000 subscribers, and we have based our fee revenue estimates on that figure.

8. Other Pay Services. Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[44] multipoint distribution systems (MDS),[45] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS).[46] According to data in the most recent report, there are 3,459 interstate carriers.[47] These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

10. The SBA has defined establishments engaged in providing ''Radiotelephone Communications'' and ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees.[48] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not ''small entities'' or ''small business concerns'' under the RFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term ''small ILECs'' to refer to any ILECs that arguably might be defined by the SBA as ''small business concerns.'' [49]

12. Total Number of Telephone Companies Affected. The U.S. Bureau of the Census (''Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[50] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not ''independently owned and operated.'' [51] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small

[37] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[38] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

[39] Paul Kagan Associates, Inc., *Cable TV Investor,* Feb. 29, 1996 (based on figures for December 30, 1995).

[40] 47 U.S.C. 543(m)(2).

[41] *Id.* 76.1403(b).

[42] Paul Kagan Associates, Inc., *Cable TV Investor,* Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[43] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules *See* 47 CFR 76.1043(d).

[44] Direct Broadcast Services (DBS) are discussed with the international services, *infra.*

[45] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra.*

[46] FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) *(Telecommunications Industry Revenue).*

[47] *Id.*

[48] 13 CFR 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* 1987).

[49] *See* 13 CFR 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order,* 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (August 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

[50] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size,* at Firm Size 1–123 (1995) (*1992 Census).*

[51] *See generally* 15 U.S.C. 632(a)(1).

ILECs that may be affected by the proposed rules, if adopted.

13. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[52] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[53] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.

14. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[54] According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services.[55] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

15. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[56] According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services.[57] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the proposed rules, if adopted.

16. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.[58] According to the most recent Telecommunications Industry Revenue data, 109 carriers reported that they were engaged in the provision of competitive access services.[59] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the proposed rules, if adopted.

17. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[60] According to the most recent *Telecommunications Industry Revenue* data, 27 carriers reported that they were engaged in the provision of operator services.[61] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by the proposed rules, if adopted.

18. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[62] According to the most recent *Telecommunications Industry Revenue* data, 441 carriers reported that they were engaged in the provision of pay telephone services.[63] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by the proposed rules, if adopted.

19. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[64] According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service.[65] We do not have data specifying the number of these carriers that are not independently owned and

[52] 1992 Census, supra, at Firm Size 1–123.

[53] 13 CFR 121.201, SIC code 4813.

[54] *Id.*

[55] *Telecommunications Industry Revenue,* Figure 2.

[56] 13 CFR 121.201, SIC code 4813.

[57] *Telecommunications Industry Revenue,* Figure 2.

[58] 13 CFR 121.201, SIC code 4813.

[59] *Telecommunications Industry Revenue,* Figure 2.

[60] 13 CFR 121.201, SIC code 4813.

[61] *Telecommunications Industry Revenue,* Figure 2.

[62] 13 CFR 121.201, SIC code 4813.

[63] *Telecommunications Industry Revenue,* Figure 2.

[64] 13 CFR 121.201, SIC code 4813.

[65] *Telecommunications Industry Revenue,* Figure 2.

operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

20. 800 Service Subscribers.[66] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 service (''toll free'') subscribers. The most reliable source of information regarding the number of 800 service subscribers appears to be data the Commission collects on the 800 numbers in use.[67] According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. Similarly, the most reliable source of information regarding the number of 888 service subscribers appears to be data the Commission collects on the 888 numbers in use.[68] According to our most recent data, at the end of August 1996, the number of 888 numbers that had been assigned was 2,014,059. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers and fewer than 2,014,059 small entity 888 subscribers that may be affected by the proposed rules, if adopted.

International Services

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[69] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[70] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million.[71] The Census report does not provide more precise data.

22. International Broadcast Stations. Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six international broadcast stations are subject to regulatory fee payments.

23. International Public Fixed Radio (Public and Control Stations). There are 3 licensees in this service subject to payment of regulatory fees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 3000 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. Fixed Satellite Small Transmit/Receive Earth Stations. There are 3000 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations may constitute a small business under the SBA definition.

26. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of VSAT systems that would constitute a small business under the SBA definition.

27. Mobile Satellite Earth Stations. There are two licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

28. Radio Determination Satellite Earth Stations. There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

29. Space Stations (Geostationary). Commission records reveal that there are 46 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition.

30. Space Stations (Non-Geostationary). There are six Non-Geostationary Space Station licensees, of which only two systems are operational. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.'' [72] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[73] As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

Mass Media Services

32. Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[74] The SBA

[66] We include all toll-free number subscribers in this category, including 888 numbers.

[67] FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends,* Tbl. 20 (May 16, 1996).

[68] FCC, CCB Industry Analysis Division, *Long Distance Carrier Code Assignments,* p. 80, Tbl. 10B (Oct. 18, 1996).

[69] An exception is the Direct Broadcast Satellite (DBS) Service, *infra.*

[70] 13 CFR 120.121, SIC code 4899.

[71] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[72] 13 CFR 120.121, SIC code 4841.

[73] 13 CFR 120.201, SIC code 4841.

[74] While we tentatively believe that the SBA's definition of ''small business'' greatly overstates the

Continued

defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[75] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[76] Included in this industry are commercial, religious, educational, and other television stations.[77] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[78] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[79] There were 1,509 television stations operating in the nation in 1992.[80] That number has remained fairly constant as indicated by the approximately 1,564 operating television broadcasting stations in the nation as of December 31, 1997.[81] For 1992,[82] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[83] Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[84] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[85] Included in this industry are commercial, religious, educational, and other radio stations.[86] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[87] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[88] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[89] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[90] As of December 31, 1997, Commission records indicate that 12,27 radio stations were operating, of which 7,465 were FM stations.[91] Only commercial stations are subject to regulatory fees.

34. Thus, the proposed rules, if adopted, will affect approximately 1,558 full power television stations, approximately 1,200 of which are considered small businesses.[92] Additionally, the proposed rules will affect some 12,156 full power radio stations, approximately 11,670 of which are small businesses.[93] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 1,952 low power television stations (LPTV).[94] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is by number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.[95] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[96] We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 4,239.[97]

Auxiliary, Special Broadcast and Other Program Distribution Services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations)

number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Report and Order* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of ''small business'' as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Report and Order*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (August 27, 1996), *citing* 5 U.S.C. 601(3).

[75] 13 CFR 120.201, SIC code 4833.

[76] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1*, Appendix A–9 (1995) *1992 Census, Series UC92–S–1).*

[77] *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes ''Television Broadcasting Stations'' (SIC code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[78] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[79] *Id.*, SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[80] FCC News Release No. 31327 (Jan. 13, 1993); *1992 Census, Series UC92–S–1*, at Appendix A–9.

[81] FCC News Release, ''Broadcast Station Totals as of December 31, 1997.''

[82] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a ''2'' or ''7''. *See 1992 Census, Series UC92–S–1*, at III.

[83] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[84] 13 CFR 120.201, SIC code 4832.

[85] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[90] FCC News Release, No. 31327 (Jan. 13, 1993).

[91] FCC News Releases, ''Broadcast Station Totals as of December 31, 1997.''

[92] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply if to be 1997 total of 1558 TV stations to arrive at 1,200 stations categorized as small businesses.

[93] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[94] FCC News Release, No. 7033 (Mar. 6, 1997).

[95] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirements of approval by the SBA pursuant to section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. 102–366, 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. 103–403, 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and the opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 8925 (June 6, 1970).

[96] *See, e.g.*, 47 CFR 73.3612 (Requirements to file annual employment reports on Forms 395 applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1085). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket N0. 96–16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

[97] Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[98]

37. There are currently 2,720 FM translators and boosters, 4,952 TV translators.[99] The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[100]

38. Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[101] In connection with the 1996 MDS auction the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[102] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[103] These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 309(j). Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[104] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 1,573 previously authorized and proposed MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,878 MDS licensees are subject to regulatory fees and the number which are small businesses is unknown.

Wireless and Commercial Mobile Services

39. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[105] According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[106] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[107] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

40. 220 MHz Radio Services. Because the Commission has not yet defined a small business with respect to 220 MHz services, we will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[108] With respect to 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Given that nearly all radiotelephone companies under the SBA definition employ no more than 1,500 employees (as noted *supra*), we will consider the approximately 1,500 incumbent licensees in this service as small businesses under the SBA definition.

41. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[109] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data.[110] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers

[98] 13 CFR 121.201, SIC code 4832.

[99] FCC News Release, *Broadcast Station Totals as of December 31, 1996,* No. 71831 (Jan. 21, 1997).

[100] 15 U.S.C. 632.

[101] For purposes of this item, MDC includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[102] *See* 47 CFR 1,2110 (a)(1).

[103] *Amendment of Part 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act-Competitive Bidding,* 10 FCC Rcd 9589 (1995), 60 FR 36524 (July 17, 1995).

[104] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide,* 123rd Edition, pp. 36–39.

[105] 13 CFR 121.291, SIC code 4812.

[106] *1992 Census, Series UC92–S–1,* at Table 5, SIC code 4812.

[107] *Telecommunications Industry Revenue,* Figure 2.

[108] 13 CFR 121.201, SIC code 4812.

[109] 13 CFR 121.201, SIC code 4812.

[110] *Telecommunications Industry Revenue,* Figure 2.

that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

42. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,[111] and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services.[112] Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

43. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[113] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[114] These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA.[115] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[116] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

44. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

45. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[117] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[118] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[119] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

46. Air-Ground Radiotelephone Service.[120] The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[121] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

47. Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[122] In the context of 900 MHz SMR, this regulation defining ''small entity'' has been approved by the SBA; approval concerning 800 MHz SMR is being sought.

48. The proposed fees in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

49. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses awarded to winning bidders, of which 38 were won by small or very small entities.

50. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

[111] 13 CFR 121.201, SIC code 4812.

[112] *Telecommunications Industry Revenue,* Figure 2.

[113] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order,* FCC 96–278, WT Docket No. 96–59, paragraphs 57–60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); *see also* 47 CFR 24.720(b).

[114] *See Amendment of parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order,* FCC 96–278, WT Docket No. 96–59, paragraph 60 (1996), 61 FR 33859 (July 1, 1996).

[115] *See, e.g.,* Implementation of section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order,* 9 FCC Rcd 5532, 5581–84 (1994).

[116] FCC News, *Broadband PCS, D, E and F Block Auction Closes,* No. 71744 (released January 14, 1997).

[117] The service is defined in 47 CFR 22.99.

[118] BETRS is defined in 47 CFR 22.757, 22.759.

[119] 13 CFR 121.201, SIC code 4812.

[120] The service is defined in 47 CFR 22.99.

[121] 13 CFR 121.201, SIC code 4812.

[122] *See* 47 CFR 90.814(b)(1).

51. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs [123] indicates that at the end of FY 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

52. Amateur Radio Service. We estimate that 10,000 applicants will apply for vanity call signs in FY 1998. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

53. Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.[124]

54. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate, however, that only 16,500 will be subject to FY 1998 regulatory fees.

55. Fixed Microwave Services. Microwave services include common carrier,[125] private-operational fixed,[126] and broadcast auxiliary radio services.[127] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.[128] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

56. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[129] There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph 4 of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[130] All licensees in this category are exempt from the payment of regulatory fees.

57. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signalling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[131] Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

58. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[132] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

59. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.

The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

[123] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994,* at 116.

[124] 13 CFR 121.201, SIC code 4812.

[125] 47 CFR 101 *et seq.* (formerly, Part 21 of the Commission's rules).

[126] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[127] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[128] 13 CFR 121.201, SIC 4812.

[129] With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes 26,608 licenses that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[130] 5 U.S.C. 601(5).

[131] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by subpart D, subpart A, subpart C, and subpart B, respectively, of part 95 of the Commission's rules. 47 CFR 95.401–95.428; 95.1–95.181; 95.201–95.225; 47 CFR 95.191–95.194.

[132] This service is governed by subpart I of part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

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

60. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159, ''FCC Remittance Advice,'' and pay a regulatory fee based on the number of licenses or call signs.[133] Interstate telephone service providers must compute their annual regulatory fee based on their adjusted gross interstate revenue using information they already supply to the Commission in compliance with the TRS Fund, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service, complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. Licensees/regulatees that must pay on the basis of subscriber counts shall submit documentation which supports the number of units for which payment is submitted. Each licensee/regulatee shall provide certification by affixing their signature to the FCC Form 159 that all information submitted is true and accurate. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

61. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. Although not mandatory, the latter procedure may require additional technical skills. Licensees who pay small fees in advance supply fee information as part of their application and do not need to use the FCC Form 159.

62. Licensees and regulatees are advised that failure to submit the required regulatory fee and/or the required supporting documentation in a timely manner will subject the licensee or regulatee to a late payment fee of an additional 25% in addition to the required fee.[134] Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.[135] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantees if that person or entity fails to pay a delinquent debt owed to any federal agency.[136] Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[137]

63. The Commission's rules currently make provision for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[138] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

64. *The Omnibus Consolidated Appropriation Act,* Pub. L. 105–119, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1998. *See* 47 U.S.C.159 (a). We have sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small business entities.

65. With the use actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The statute establishing regulatory fees provides for permitted amendments to be made to the schedule of fees in the public interest.[139] The methodology adopted in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

66. We have developed and adopted an alternative methodology for assessing fees to recover the regulatory costs attributable to AM and FM radio stations. The radio industry has requested additional relief for small stations, and we offered two alternative proposals for comment. One would update the schedule of fees adopted in the FY 1997 *Report and Order.* The other proposal would increase the differences in the fee amount between larger and smaller stations. Both options benefitted by changing the service contours used to determine populations for determining station size. The impact of adoption of our proposal will result in lower fees for smaller, less powerful stations relative to larger, more powerful stations in the same radio market; or stations potentially serving a larger population.

67. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See,* e.g., footnote 108, *supra,* and Attachment H of this *Report and Order, infra.*

Report to Congress: The Commission shall include a copy of this Final

[133] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the license of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[134] 47 U.S.C. 1.1164(a).

[135] 47 U.S.C. 1.1164(c).

[136] Pub. L. 104–134, 110 Stat. 1321 (1996).

[137] 31 U.S.C. 7701(c)(2)(B).

[138] 47 U.S.C. 1.1166.

[194] *See* 47 U.S.C. <nothing> 159(b)(1)(A) and (b)(3).

Regulatory Flexibility Analysis, along with this *Report and 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). A copy of this FRFA (or summary thereof) will also be published in the **Federal Register**, along with this *Report and Order*.

Attachment B—Sources of Payment Unit Estimates For FY 1998

In order to calculate individual service fees for FY 1998, we adjusted FY 1997 payment units for each service to more accurately reflect expected FY 1998 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1998 estimates with actual FY 1997 payment units to ensure that our revised estimates were reasonable. Where it made sense, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 1998 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 1998 payment units are based on FY 1997 actual payment units, it does not necessarily mean that our FY 1998 projection is *exactly* the same number as FY 1997. It means that we have either rounded the FY 1998 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, IVDS[140], Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on actual FY 1997 payment units adjusted to take into consideration industry estimates of growth between FY 1997 and FY 1998 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS Messaging Services	Based on industry estimates of the number of units in operation.
AM/FM Radio Stations	Based on actual FY 1997 payment units.
UHF/VHF Television Stations	Based on actual FY 1997 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1997 payment units.
LPTV, Translators and Boosters	Based on actual FY 1997 payment units.
Auxiliaries	Based on actual FY 1997 payment units.
MDS/MMDS	Based on actual FY 1997 payment units.
Cable Antenna Relay Service (CARS)	Based on actual FY 1997 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers	Based on actual FY 1997 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund, adjusted to take into consideration FY 1998 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1997 payment units.
Space Stations (GEOs & NGEOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimate.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on actual FY 1997 payment units.

Attachment C—Calculation of Revenue Requirements

Fee category	FY 1998 payment units	(times) FY 1997 Fee	(times) payment years	(equals) computed FY 1998 revenue requirement	Pro-rated revenue requirement**
LM (220 MHz, >470 MHZ-Base, SMRS)	4,645	10	5	232,250	225,691
Private Microwave	3,830	10	10	383,000	372,184
Domestic Public Fixed/Comc'l Microwave	5,150	10	10	515,000	500,456
IVDS	0	0	5	0	0
Marine (Ship)	16,500	5	10	825,000	801,702
GMRS/Other LM	72,465	5	5	1,811,625	1,760,465
Aviation (Aircraft)	3,500	5	10	175,000	170,058
Marine (Coast)	1,370	5	5	34,250	33,283
Aviation (Ground)	1,865	5	5	46,625	45,308
Amateur Vanity Call Signs	10,000	5	10	500,000	485,880
AM/FM Radio	8,646	1,126	1	9,735,396	9,460,469
AM Construction Permits	62	195	1	12,090	11,749
FM Construction Permits	473	950	1	449,350	436,660
Satellite TV	105	950	1	99,750	96,933
Satellite TV Construction Permit	10	345	1	3,450	3,353

[140] The Wireless Telecommunications Bureau's staff advises that they do not anticipate receiving any applications for IVDS in FY 1998. Therefore, since there is no volume, there will be no regulatory fee in the IVDS category for FY 1998.

Fee category	FY 1998 payment units	(times) FY 1997 Fee	(times) payment years	(equals) computed FY 1998 revenue requirement	Pro-rated revenue requirement**
VHF Markets 1–10	42	35,025	1	1,471,050	1,429,508
VHF Markets 11–25	61	28,450	1	1,735,450	1,686,441
VHF Markets 26–50	71	18,600	1	1,320,600	1,283,306
VHF Markets 51–100	118	9,850	1	1,162,300	1,129,477
VHF Remaining Markets	207	2,725	1	564,075	548,146
VHF Construction Permits	10	4,800	1	48,000	46,644
UHF Markets 1–10	94	16,850	1	1,583,900	1,539,171
UHF Markets 11–25	96	13,475	1	1,293,600	1,257,069
UHF Markets 26–50	124	8,750	1	1,085,000	1,054,360
UHF Markets 51–100	172	4,725	1	812,700	789,749
UHF Remaining Markets	182	1,350	1	245,700	238,761
UHF Construction Permits	50	2,975	1	148,750	144,549
Auxiliaries	20,000	25	1	500,000	485,880
International HF Broadcast	4	390	1	1,560	1,516
LPTV/Translators/Boosters	2,290	220	1	503,800	489,573
CARS	1,800	65	1	117,000	113,686
Cable Systems	66,000,000	0.54	1	35,640,000	34,633,530
Interstate Telephone Service Providers	70,103,000	0.00116	1	81,319,480	79,023,026
CMRS Mobile Services (Cellular/Public Mobile)	55,540,000	0.24	1	13,329,600	12,953,173
CMRS Messaging Services	39,592,000	0.03	1	1,187,760	1,154,218
MDS/MMDS	1,878	215	1	403,770	392,368
International Circuits	325,000	5	1	1,625,000	1,579,110
International Public Fixed	3	310	1	930	904
Earth Stations	3,000	515	1	1,545,000	1,501,369
Space Stations (Geostationary)	46	97,975	1	4,506,850	4,379,577
Space Stations (Non-geostationary)	2	135,675	1	271,350	263,687
Total Estimated Revenue Collected				167,246,011	162,523,000
Total Revenue Requirement				162,523,000	162,523,000
Difference				4,723,011	0

**0.971760098 factor applied.

ATTACHMENT D—CALCULATION OF REGULATORY COSTS

Fee category	Actual FY 1997 regulatory costs	Overhead and other indirect pro rated	Total costs with overhead and other indirect pro rated	Total costs pro-rated to $162 Million**	Adjusted pro-rated costs***
LM (220 MHz, >470 MHZ-Base, SMRS)	1,952,428	98,195	2,050,623	2,113,136	2,113,136
Microwave	4,860,809	244,469	5,105,277	5,260,912	5,260,912
IVDS	2,122,499	106,749	2,229,248	2,297,206	2,297,206
Marine (Ship)	2,754,238	138,521	2,892,759	2,980,945	2,980,945
GMRS/Other LM	5,943,682	298,930	6,242,612	6,432,918	6,432,918
Aviation (Aircraft)	980,895	49,333	1,030,228	1,061,635	1,061,635
Marine (Coast)	685,608	34,482	720,090	742,041	742,041
Aviation (Ground)	562,239	28,277	590,516	608,518	608,518
Amateur Vanity Call Signs	88,615	4,457	93,072	95,909	95,909
AM/FM Radio	14,125,529	710,427	14,835,955	15,288,230	14,396,926
AM Construction Permits					103,960
FM Construction Permits					787,344
Satellite TV					138,603
Satellite TV Construction Permit					3,489
VHF Television	4,957,533	249,333	5,206,866	5,365,598	
VHF Markets 1–10					1,177,538
VHF Markets 11–25					1,423,609
VHF Markets 26–50					1,134,321
VHF Markets 51–100					1,055,080
VHF Remaining Markets					479,377
VHF Construction Permits					18,765
UHF Television	2,954,865	148,611	3,103,476	3,198,086	
UHF Markets 1–10					993,777
UHF Markets 11–25					767,939
UHF Markets 26–50					614,629
UHF Markets 51–100					510,374
UHF Remaining Markets					147,610
UHF Construction Permits					98,573

ATTACHMENT D—CALCULATION OF REGULATORY COSTS—Continued

Fee category	Actual FY 1997 regulatory costs	Overhead and other indirect pro rated	Total costs with overhead and other indirect pro rated	Total costs pro-rated to $162 Million **	Adjusted pro-rated costs ***
Auxiliaries	146,460	7,366	153,826	158,515	158,515
International HF Broadcast	217,931	10,961	228,891	235,869	235,869
LPTV/Translators/Boosters	736,547	37,044	773,590	797,173	797,173
CARS	61,797	3,108	64,905	66,883	66,883
Cable Systems	20,125,023	1,012,164	21,137,187	21,781,555	21,781,555
Interstate Telewphone Service Providers	53,234,026	2,677,341	55,911,367	57,615,828	57,615,828
CMRS Mobile Services (Cellular/Public Mobile)	11,273,798	567,002	11,840,801	12,201,768	12,201,768
CMRS Messaging Services	6,015,701	302,552	6,318,254	6,510,866	6,510,866
MDS/MMDS	1,357,260	68,262	1,425,521	1,468,979	1,468,979
International Circuits	8,253,772	415,114	8,668,886	8,933,157	8,933,157
International Public Fixed	193,436	9,729	203,165	209,358	209,358
Earth Stations	339,999	17,100	357,099	367,985	367,985
Space Stations (Geostationary)	5,677,889	285,563	5,963,452	6,145,248	6,145,248
Space Stations (Non-Geostationary)	540,215	27,169	567,385	584,681	584,681
Overhead & Other Indirect Costs	7,552,257	.....	.....	.....	.....
Total	157,715,049	7,552,257	157,715,049	162,523,000	159,839,216
Total Revenue Requirement	162,523,000	.....	162,523,000	162,523,000	162,523,000
Difference	(4,807,951)	.....	(4,807,951)	0	(2,683,784)

** 1.046987 factor applied.
*** The pro rated costs shown in the previous column needed to be adjusted to sub-allocate actual TV and radio costs.
Note: Columns may not add due to rounding.

ATTACHMENT E—CALCULATION OF FY 1998 REGULATORY FEES

Fee category	Pro-rated revenue requirement	Adjusted activity costs	Costs vs. revenue requirement difference (percent)	Pro-rated revenue requirement plus 25% ceiling	Round 1 target revenue	Round 1 adjustable target revenue	Round 1 pro-rated target revenue**	Round 2 target revenue	Round 2 adjustable target revenue	Round 2 pro-rated target revenue***	Computed new FY 1998 regulatory fee	Rounded new FY 1998 regulatory fee	Expected FY 1998 revenue
LM (220 MHz, >470 MHZ-Base, SMRS)	225,691	2,113,136	836.30	282,114	282,114	.....	282,114	282,114	.....	282,114	12	12	278,700
Microwave	872,640	5,260,912	502.87	1,090,800	1,090,800	.....	1,090,800	1,090,800	.....	1,090,800	12	12	1,077,600
IVDS	0	2,297,206	.....	0	0	.....	0	0	.....	0	0	0	0
Marine (Ship)	801,702	2,980,945	271.83	1,002,128	1,002,128	.....	1,002,128	1,002,128	.....	1,002,128	6	6	990,000
GMRS/Other LM	1,760,465	6,432,918	265.41	2,200,581	2,200,581	.....	2,200,581	2,200,581	.....	2,200,581	6	6	2,173,950
Aviation (Aircraft)	170,058	1,061,635	524.28	212,573	212,573	.....	212,573	212,573	.....	212,573	6	6	210,000
Marine (Coast)	33,283	742,041	2129.49	41,604	41,604	.....	41,604	41,604	.....	41,604	6	6	41,100
Aviation (Ground)	45,308	608,518	1243.07	56,635	56,635	.....	56,635	56,635	.....	56,635	6	6	55,950
Amateur Vanity Call Signs	485,880	95,909	(80.26)	607,350	95,909	95,909	128,372	128,372	128,372	128,527	1.29	1.30	130,000
AM/FM Radio	9,460,469	14,396,926	52.18	11,825,586	11,825,586	.....	11,825,586	11,825,586	.....	11,825,586	1,368	1,375	11,888,250
AM Construction Permits	11,749	103,960	784.84	14,686	14,686	.....	14,686	14,686	.....	14,686	237	235	14,570
FM Construction Permits	436,660	787,344	80.31	545,825	545,825	.....	545,825	545,825	.....	545,825	1,154	1,150	543,950
Satellite TV	96,933	138,603	42.99	121,166	121,166	.....	121,166	121,166	.....	121,166	1,166	1,175	123,375
Satellite TV Construction Permit	3,353	3,489	4.06	4,191	3,489	3,489	4,670	4,191	.....	4,191	419	420	4,200
VHF Markets 1–10	1,429,508	1,177,538	(17.63)	1,786,885	1,177,538	1,177,538	1,576,112	1,576,112	1,576,112	1,578,013	37,572	37,575	1,578,150
VHF Markets 11–25	1,686,441	1,423,609	(15.59)	2,108,051	1,423,609	1,423,609	1,905,473	1,905,473	1,905,473	1,907,772	31,275	31,275	1,907,775
VHF Markets 26–50	1,283,306	1,134,321	(11.61)	1,604,133	1,134,321	1,134,321	1,518,267	1,518,267	1,518,267	1,520,098	21,410	21,400	1,519,400
VHF Markets 51–100	1,129,477	1,055,080	(6.59)	1,411,846	1,055,080	1,055,080	1,412,204	1,411,846	.....	1,411,846	11,965	11,975	1,413,050
VHF Remaining Markets	548,146	479,377	(12.55)	685,183	479,377	479,377	641,637	641,637	641,637	642,411	3,103	3,100	641,700
VHF Construction Permits	46,664	18,765	(59.79)	58,350	18,765	18,765	25,117	25,117	25,117	25,147	2,515	2,525	25,250
UHF Markets 1–10	1,539,171	993,777	(35.43)	1,923,964	993,777	993,777	1,330,151	1,330,151	1,330,151	1,331,756	14,168	14,175	1,332,450
UHF Markets 11–25	1,257,069	767,939	(38.91)	1,571,336	767,939	767,939	1,027,872	1,027,872	1,027,872	1,029,111	10,720	10,725	1,029,600
UHF Markets 26–50	1,054,360	614,629	(41.71)	1,317,950	614,629	614,629	822,669	822,669	822,669	823,661	6,642	6,650	824,600
UHF Markets 51–100	789,749	510,374	(35.38)	987,186	510,374	510,374	683,126	683,126	683,126	683,950	3,976	3,975	683,700
UHF Remaining Markets	238,761	147,610	(38.18)	298,451	147,610	147,610	197,573	197,573	197,573	197,811	1,087	1,075	195,650
UHF Construction Permits	144,549	98,573	(31.81)	180,686	98,573	98,573	131,938	131,938	131,938	132,097	2,642	2,650	132,500
Auxiliaries	485,880	158,515	(67.38)	607,350	158,515	158,515	212,169	212,169	212,169	212,425	11	11	220,000
International HF Broadcast	1,516	235,869	15458.64	1,895	1,895	.....	1,895	1,895	.....	1,895	474	475	1,900
LPTV/Translators/Boosters	489,573	797,173	62.83	611,966	611,966	.....	611,966	611,966	.....	611,966	267	265	606,850
CARS	113,696	66,883	(41.17)	142,120	66,883	66,883	89,522	89,522	89,522	89,630	50	50	90,000
Cable Systems	34,633,530	21,781,555	(37.11)	43,291,913	21,781,555	21,781,555	29,154,192	29,154,192	29,154,192	29,189,360	0.44	0.44	29,189,360
Interstate Telephone Service Providers	79,023,026	57,615,828	(27.09)	98,778,783	57,615,828	57,615,828	77,117,676	77,117,676	77,117,676	77,210,702	0.0011	0.0011	77,210,702
CMRS Mobile Services (Cellular/Public Mobile)	12,953,173	12,201,768	(5.80)	16,191,466	12,201,768	12,201,768	16,331,831	16,191,466	.....	16,191,466	0.29	0.29	16,191,466
CMRS Messaging Services	1,154,218	6,510,866	464.09	1,442,773	1,442,773	.....	1,442,773	1,442,773	.....	1,442,773	0.04	0.04	1,442,773
MDS/MMDS	392,368	1,468,979	274.39	490,460	490,460	.....	490,460	490,460	.....	490,460	261	260	488,280
International Circuits	1,579,110	8,933,157	465.71	1,973,888	1,973,888	.....	1,973,888	1,973,888	.....	1,973,888	6	6	1,950,000
International Public Fixed	904	209,358	23059.07	1,130	1,130	.....	1,130	1,130	.....	1,130	377	375	1,125
Earth Stations	1,501,369	367,985	(75.49)	1,876,711	367,985	367,985	492,541	492,541	492,541	493,135	164	165	495,000
Space Stations (Geostationary)	4,379,577	6,145,248	40.32	5,474,471	5,474,471	.....	5,474,471	5,474,471	.....	5,474,471	119,010	119,000	5,474,000
Space Stations (Non-Geostationary)	263,687	584,681	121.73	329,609	329,609	.....	329,609	329,609	.....	329,609	164,804	164,800	329,000
Total Estimated Revenue Collected	162,523,019	162,522,999	.....	203,153,774	128,433,413	100,713,524	162,523,000	162,381,798	117,054,406	162,524,243	.....	.....	162,506,526
Total Revenue Requirement	162,523,000	162,523,000	.....	162,523,000	162,523,000	.....	162,523,000	162,523,000	.....	162,523,000	.....	.....	162,523,000
Difference	19	(1)	.....	40,630,774	(34,089,587)	.....	0	(141,202)	.....	1,243	.....	.....	(16,474)

**1.33782803 factor applied.
***1.003487295 factor applied.

ATTACHMENT F—FY 1998 SCHEDULE OF REGULATORY FEES

Fee category	Annual regulatory fee
PMRS (per license) (Formerly Land Mobile—Exclusive Use at 220–222 MHz, above 470 MHz, Base Station and SMRS) (47 CFR Part 90)	12
Microwave (per license) (47 CFR Part 101)	12
Interactive Video Data Service (per license) (47 CFR Part 95)	[1]
Marine (Ship) (per station) (47 CFR Part 80)	6
Marine (Coast) (per license) (47 CFR Part 80)	6
General Mobile Radio Service (per license) (47 CFR Part 95)	6
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	6
Aviation (Aircraft) (per station) (47 CFR Part 87)	6
Aviation (Ground) (per license) (47 CFR Part 87)	6
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	1.30
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90)	.29
CMRS Messaging Services (per unit) (47 CFR Parts 20, 22 and 90)	.04
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	260
TV (47 CFR Part 73) VHF Commercial:	
Markets 1–10	37,575
Markets 11–25	31,275
Markets 26–50	21,400
Markets 51–100	11,975
Remaining Markets	3,100
Construction Permits	2,525
TV (47 CFR Part 73) UHF Commercial:	
Markets 1–10	14,175
Markets 11–25	10,725
Markets 26–50	6,650
Markets 51–100	3,975
Remaining Markets	1,075
Construction Permits	2,650
Satellite Television Stations (All Markets)	1,175
Construction Permits—Satellite Television Stations	420
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	265
Broadcast Auxiliary (47 CFR Part 74)	11
Cable Antenna Relay Service (47 CFR Part 78)	50
Cable Television Systems (per subscriber) (47 CFR Part 76)	.44
Interstate Telephone Service Providers (per revenue dollar)	.0011
Earth Stations (47 CFR Part 25)	165
Space Stations (per operational station in geostationary orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	119,000
Space Stations (per operational system in non-geostationary orbit) (47 CFR Part 25)	164,800
International Bearer Circuits (per active 64KB circuit)	6
International Public Fixed (per call sign) (47 CFR Part 23)	375
International (HF) Broadcast (47 CFR Part 73)	475

[1] No fee.

RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001–50,000	750	600	300	400	600	750
50,001–125,000	1,250	800	400	600	800	1,250
125,001–400,000	1,750	1,250	600	750	1,250	1,750
400,001–1,000,000	2,500	2,000	1,000	1,250	2,000	2,500
>1,000,000	4,000	3,250	1,500	2,000	3,250	4,000

ATTACHMENT G—COMPARISON BETWEEN FY 1997 AND FY 1998 PROPOSED AND FINAL REGULATORY FEES

Fee category	Annual regulatory fee FY 1997	NPRM proposed fee FY 1998	Annual regulatory fee FY 1998
PMRS (per license) (Formerly Land Mobile-Exclusive Use at 220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	10	12	12
Microwave (per license) (47 CFR Part 101)	10	12	12
Interactive Video Data Service (per license) (47 CFR Part 95)	([1])	([1])	([1])
Marine (Ship) (per station) (47 CFR Part 80)	5	6	6
Marine (Coast) (per license) (47 CFR Part 80)	5	6	6
General Mobile Radio Service (per license) (47 CFR Part 95)	5	6	6

ATTACHMENT G—COMPARISON BETWEEN FY 1997 AND FY 1998 PROPOSED AND FINAL REGULATORY FEES—Continued

Fee category	Annual regulatory fee FY 1997	NPRM proposed fee FY 1998	Annual regulatory fee FY 1998
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	5	6	6
Aviation (Aircraft) (per station) (47 CFR Part 87)	5	6	6
Aviation (Ground) (per license) (47 CFR Part 87)	5	6	6
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	5	1.29	1.30
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90)	.24	.29	.29
CMRS Messaging Services [formerly One Way Paging] (per unit) (47 CFR Parts 20, 22, and 90)	.03	.04	.04
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	215	260	260
AM/FM Radio (47 CFR Part 73):			
Group 1	2,000	2,500	(2)
Group 2	1,800	2,250	(2)
Group 3	1,600	2,000	(2)
Group 4	1,400	1,750	(2)
Group 5	1,200	1,500	(2)
Group 6	1,000	1,250	(2)
Group 7	800	1,000	(2)
Group 8	600	750	(2)
Group 9	400	500	(2)
Group 10	200	250	(2)
AM Construction Permits	195	235	235
FM Construction Permits	950	1,150	1,150
TV (47 CFR Part 73) VHF Commercial:			
Markets 1–10	35,025	41,275	37,575
Markets 11–25	28,450	24,850	31,275
Markets 26–50	18,600	22,600	21,400
Markets 51–100	9,850	11,375	11,975
Remaining Markets	2,725	3,250	3,100
Construction Permits	4,800	4,100	2,525
TV (47 CFR Part 73) UHF Commercial:			
Markets 1–10	16,850	14,625	14,175
Markets 11–25	13,575	10,575	10,725
Markets 26–50	8,750	5,750	6,650
Markets 51–100	4,725	3,775	3,975
Remaining Markets	1,350	1,500	1,075
Construction Permits	2,975	3,625	2,650
Satellite Television Stations (All Markets)	950	900	1,175
Construction Permits—Satellite Television Stations	345	420	420
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	220	265	265
Broadcast Auxiliary (47 CFR Part 74)	25	11	11
Cable Antenna Relay Service (47 CFR Part 78)	65	50	50
Earth Stations (47 CFR Part 25)	515	165	165
Cable Television Systems (per subscriber) (47 CFR Part 76)	.54	.44	.44
Interstate Telephone Service Providers (per revenue dollar)	.00116	.0011	.0011
Space Stations (per operational station in geostationary orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	97,975	119,000	119,000
Space Stations (per operational system in non-geostationary orbit) (47 CFR Part 25)	135,675	164,800	164,800
International Bearer Circuits (per active 64KB circuit)	5	6	6
International Public Fixed (per call sign) (47 CFR Part 23)	310	375	375
International (HF) Broadcast (47 CFR Part 73)	390	475	475

[1] No fee.
[2] See radio.

RADIO STATION REGULATORY FEES

Populationserved	AM class A	AM class B	AM class C	AM class D	FMclasses A, B1 & C3	FMclasses B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001–50,000	750	600	300	400	600	750
50,001–125,000	1,250	800	400	600	800	1,250
125,001–400,000	1,750	1,250	600	750	1,250	1,750
400,001–1,000,000	2,500	2,000	1,000	1,250	2,000	2,500
>1,000,000	4,000	3,250	1,500	2,000	3,250	4,000

Attachment H—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9(g) of the Communications Act, 47 U.S.C. 159(g) as modified in the instant *Report and Order.* Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994, 1995, 1996, and 1997 and the services subject to the fee schedule, and the comments of the parties in our proceeding to adopt fees for FY 1998. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission. *See* 47 U.S.C. 159(b) (2), (3).

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity may be asked to submit a current IRS Determination Letter documenting that it is exempt from taxes under section 501of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees. *See* 47 U.S.C. 159(b)(1)(A). In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Mobile Radio Services (PMRS) (Formerly Land Mobile Services):* Regulatees in this category include those authorized under part 90 of the Commission's rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[141] For FY 1998, PMRS licensees will pay a $12 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.[142] The total regulatory fee due is either $60 for a license with a five year term or $120 for a license with a 10 year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 1998, Microwave licensees will pay a $12 annual regulatory fee per license, payable for an entire ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $120 for the ten year license term.

6. *Interactive Video Data Service (IVDS):* The IVDS is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's rules. The IVDS provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The IVDS is offered on a private carrier basis. The Commission does not anticipate receiving any applications in the IVDS during FY 1998. Therefore, for FY 1998, there is no regulatory fee for IVDS licensees.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. Private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 1998, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $6 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $60 for the ten year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1998, licensees of Marine (Coast) Stations will pay a $6 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $30 per call sign for the five-year license term.

9. *Private Land Mobile (Other) Services:* These services include Land Mobile Radio Services operating under

[141] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[142] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 1997 is less than one-tenth of one percent and, therefore, is statistically insignificant.

parts 90 and 95 of the Commission's rules. Services in this category provide one- or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 1998, licensees of services in this category will pay a $6 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $30 for the five-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. Private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 1998, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $6 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $60 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 1998, licensees of Aviation (Ground) Stations will pay a $6 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $30 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's rules. For FY 1998, GMRS licensees will pay a $6 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $30 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This fee covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's rules. For FY 1998, applicants for Amateur Vanity Call-Signs will pay a $1.30 annual regulatory fee per call sign, payable for an entire ten-year license term at the time of application for a vanity call sign. The total regulatory fee due would be $13 per license for the ten-year license term.[143]

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.*, Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (*e.g.*, Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);[144] Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number), assigned to its customers, including resellers of its services. For FY 1998, the regulatory fee is $.29 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services:* The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging, qualifying interconnected Business Radio Services, and 220–222 MHz Land Mobile Systems), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), and licensees of Personal Communications Service (PCS) one-way and two-way paging. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. We have replaced the CMRS One-Way Paging regulatory fee category with a CMRS Messaging Services category for regulatory fee collection purposes. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 1998, the regulatory fee is $.04 per unit.

16. Finally, we are reiterating our definition of CMRS payment units to make it clear that fees are assessable on each PCS or cellular telephone and each one-way or two-way pager capable of receiving or transmitting information, whether or not the unit is ''active'' on the ''as of'' date for payment of these fees. The unit becomes ''feeable'' if the end user or assignee of the unit has possession of the unit and the unit is capable of transmitting or receiving voice or non-voice messages or data and the unit is either owned and operated by the licensee of the CMRS system or a reseller, or the end user of a unit has a contractual agreement for provision of a CMRS service from a licensee of a CMRS system or a reseller of a CMRS service. The responsible payer is the CMRS licensee. For example, John Doe purchases a pager and contractually obtains paging services from Pagin Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular

[143] Section 9(h) exempts ''amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)'' from the requirement. However, section 9(g)'s fee schedule explicitly includes ''Amateur vanity call signs'' as a category subject to the payment of a regulatory fee.

[144] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

telephones to a high school and the high school either pays for or obtains free service from the Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fee for these units.

2. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's rules.[145] In response to numerous requests, we have combined class of station and grade B contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations or FY 1998 are as follows:

RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001–50,000	750	600	300	400	600	750
50,001–125,000	1,250	800	400	600	800	1,250
125,001–400,000	1,750	1,250	600	750	1,250	1,750
400,001–1,000,000	2,500	2,000	1,000	1,250	2,000	2,500
>1,000,000	4,000	3,250	1,500	2,000	3,250	4,000

19. Licensees may determine the appropriate fee payment by referring to the list provided at Attachment L to this *Report and Order.* This same information will be available on the FCC's internet world wide web site (http://www.fcc.gov), by calling the FCC's National Call Center (1–888–225–5322), and will be included in the Public Notices mailed to each licensee.

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct new Commercial AM Stations. For FY 1998, permittees will pay a fee of $235 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated class of the station.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct new Commercial FM Stations. For FY 1998, permittees will pay a fee of $1,150 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated class of the station.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook,* Stations Volume No. 66, 1998 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10	$37,575
VHF Markets 11–25	31,275
VHF Markets 26–50	21,400
VHF Markets 51–100	11,975
VHF Remaining Markets	3,100
UHF Markets 1–10	$14,175
UHF Markets 11–25	10,725
UHF Markets 26–50	6,650
UHF Markets 51–100	3,975
UHF Remaining Markets	1,075

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of 73.3555 of the Commission's rules) that retransmit programming of the primary station are assessed a fee of $1,175 annually. Those stations designated as Television Satellite Stations in the 1998 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1998, VHF permittees will pay an annual regulatory fee of $2,525. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct new UHF Television Stations. For FY 1998, UHF Television permittees will pay an annual regulatory fee of $2,650. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

[145] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.Stations for FY 1998 are as follows:

h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 1998 is $420. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community based Translators are exempt from regulatory fees. For FY 19978 licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $265 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 1998, licensees of Commercial Auxiliary Stations will pay an $11 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under part 21 of the Commission's rules to use microwave frequencies for video and data distribution within the United States. For FY 1998, MDS and MMDS stations will pay an annual regulatory fee of $260 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's rules. For FY 1998, Cable Systems will pay a regulatory fee of $.44 per subscriber.[146] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1997. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order*, Appendix B at paragraph 31.

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1998, licensees will pay an annual regulatory fee of $50 per CARS license.

[146] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *infra*).

b. Interstate Telephone Service Providers

33. This category includes Inter-Exchange Carriers (IXCs), Local Exchange Carriers (LECs), Competitive Access Providers (CAPs), domestic and international carriers that provide operator services, Wide Area Telephone Service (WATS), 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers. This category also includes pre-paid calling card providers. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund. *See Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993), 58 FR 39671 (July 26, 1993). In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues, as reported to NECA in connection with their TRS contribution, any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service. For this purpose, resold telecommunications facilities and services are only intended to include payments that correspond to revenues that will be included by another carrier reporting interstate revenue. For FY 1998, carriers must multiply their adjusted gross revenue figure (gross revenue reduced by the total amount of their payments to underlying common carriers for telecommunications facilities or

services) by the factor 0.0011 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

	Total	Interstate
(1) Revenue reported in TRS Fund worksheets		
(2) Less: Access charges paid		
(3) Less: Other telecommunications facilities and services taken for resale		
(4) Adjusted revenues (1)minus(2)minus(3)		
(5) Fee factor		0.0011
(6) Fee due (4)times(5)		

5. International Services

a. Earth Stations

34. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's rules. *Mobile Satellite Earth Stations,* operating pursuant to part 25 of the Commission's rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[147] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas,* authorized or registered under part 25 of the Commission's rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 1998, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $165 per authorization or registration *as well as a separate fee of $165 for each associated Hub Station.*

35. *Receive-only earth stations.* For FY 1998, there is no regulatory fee for receive-only earth stations.

[147] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrasts, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 1997.

b. Space Stations (Geostationary)

36. Geostationary Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 1998, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of $97,975 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary)

37. Non-geostationary Orbit (NGSO) Systems (such as Low Earth Orbit Satellite Systems) are space stations that orbit the earth in non-geostationary orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1998, entities authorized to operate NGSOs will be assessed an annual regulatory fee of $164,800 per operational system in orbit. Payment is required for any NGSO System that has one or more satellites operational. In our FY 1997 *Report and Order* at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon certification of operation of a single satellite pursuant to section 25.120(d) subsequently renumbered as § 25.121(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because § 25.121(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in conditions of the license) we are clarifying our current definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

Licensees of non-geostationary satellite systems (such as LEOs) are assessed a regulatory fee upon the commencment of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to § 25.120(d).

d. International Bearer Circuits

38. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare* FY 1994 *Report and Order* at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 Kbps circuits, or equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps

circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1998, the regulatory fee is $6.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 Kbps circuits
36	630
24	288
18	240

e. International Public Fixed

39. This fee category includes common carriers authorized under part 23 of the Commission's rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1998, International Public Fixed Radio Service licensees will pay a $375 annual regulatory fee per call sign.

f. International (HF) Broadcast

40. This category covers International Broadcast Stations licensed under part 73 of the Commission's rules to operate on frequencies in the 5,950 KHz to 26,100 KHz range to provide service to the general public in foreign countries. For FY 1998, International HF Broadcast Stations will pay an annual regulatory fee of $475 per station license.

Attachment I—Description of FCC Activities

I. Activities That Are Not Included in Regulatory Fees

1. *Authorization of Service*

The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities. Although Authorization of Service is described in this attachment, it is *not* one of the activities included as a feeable activity for regulatory fee purposes pursuant to section 9(a)(1) of the Act. 47 U.S.C. 159(a)(1).

II. Activities That are Included in Regulatory Fees

2. Policy and Rulemaking

Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rulemaking activities.

3. Enforcement

Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

4. Public Information Services

The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

Attachment J—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in § 73.150 and 73.152 of the Commission's rules. *See* 47 U.S.C. 73.150 and 73.152. Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in § 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials. *See* 47 U.S.C. 73.313. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

Attachment K—Parties Filing Comments and Reply Comments

Parties Filing Comments on the Notice of Proposed Rule Making

Named State Broadcasters Associations
National Association of Broadcasters
SBC Communications, Inc.
Columbia Communications Corp.
GE American Communications, Inc.

Loral Space & Communications Ltd.
Orbital Communications Corp.
PanAmSat Corp.
Satellite Industry Association
BellSouth Wireless Data
Paging Network, Inc.
Personal Communications Industry Association
Small business In Telecommunications
American Radio Relay League

Parties Filing Reply Comments on the Notice of Proposed Rule Making

GE American Communications, Inc.
PanAmSat Corp.
BellSouth Cellular Corp. & Wireless Data, L.P.
Paging Network, Inc.
PrimeCo Personal Communications
American Mobile Telecommunications Association, Inc.
Comcast Cellular Communications, Inc.

Attachment L—AM and FM Radio Regulatory Fees

(List will be filed in the Docket file for this proceeding to avoid publication costs.)

[FR Doc. 98–17222 Filed 6–30–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 126
Wednesday, July 1, 1998

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

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2420 through 2423, 2470 and 2472

Regulations Implementing Coverage of Federal Sector Labor Relations Laws to the Executive Office of the President

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Labor Relations Authority (FLRA) proposes to revise portions of its regulations in order to carry out its responsibilities under the Presidential and Executive Office Accountability Act. The FLRA was directed to issue regulations implementing coverage of the Federal Service Labor-Management Relations Statute to the Executive Office of the President no later than October 1, 1998. The FLRA is also providing an opportunity for all interested persons to comment on an issue that has arisen during the consideration of these regulatory revisions.

DATES: Comments must be received on or before July 31, 1998.

ADDRESSES: Mail or deliver written comments to the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW., Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Office of Case Control, at the address listed above or by telephone # (202) 482–6500.

SUPPLEMENTARY INFORMATION:

1. Background

The Presidential and Executive Office Accountability Act (Pub. L. 104–331) (the EOAA) was enacted on October 26, 1996, extending the coverage of eleven civil rights, labor, and employment laws to the Executive Office of the President (EOP). The EOAA applies Chapter 71 of Title 5, the Federal Service Labor-Management Relations Statute (the Statute), to the EOP and requires the FLRA to promulgate regulations to implement the EOAA, no later than October 1, 1998.

The EOP is comprised of thirteen separate offices: The White House Office, the Executive Residence at the White House, the Office of the Vice President, the Official Residence of the Vice President, the Office of Policy Development, the Council of Economic Advisors, the Council on Environmental Quality and Office of Environmental Quality, the National Security Council, the Office of Administration, the Office of Management and Budget, the Office of National Drug Control Policy, the Office of Science and Technology, and the Office of the United States Trade Representative.

According to House Report No. 104–820 (110 Stat. 4375), there are roughly 1,700 employees working in the EOP. Less than one-third of these are Title 3 employees, who traditionally serve at the discretion of the President. The Title 3 employees work in the White House Office, the Office of the Vice President, the Office of Policy Development, the Executive Residence, and the Official Residence of the Vice President. The remaining 1,150 employees working in the other eight EOP offices are covered by Title 5, and are civil service employees serving under the same laws and regulations as other career executive branch employees. These Title 5 employees previously covered by Chapter 71 of Title 5, are now covered under the provisions of the EOAA.

2. Requirements placed on the FLRA

The EOAA contains a general requirement that the FLRA issue regulations for the EOP that are the same as the substantive regulations promulgated by the FLRA for all other agencies under its jurisdiction. This general requirement applies differently, however, depending on the EOAA's classification of the EOP offices.

With respect to the first group of five designated offices (the Council on Environmental Quality, the Office of Administration, the Office of Science and Technology Policy, the Office of the U.S. Trade Representative, and the Official Residence of the Vice President), the EOAA requires that the FLRA's regulations be the same as the regulations that apply to other agencies, except to the extent that the Authority determines for good cause, or to avoid a conflict of interest or an appearance of a conflict of interest, that a modification is required. For the remaining eight EOP offices, the EOAA requires that the FLRA exclude from coverage employees if the FLRA determines that exclusion is required because of a conflict of interest, an appearance of a conflict of interest, or the President's or Vice President's constitutional responsibilities.

3. Prior Federal Register Notice

The FLRA published a **Federal Register** notice (63 FR 16141, Apr. 2, 1998) inviting parties to submit written recommendations on what, if any, modifications to the FLRA's current regulations were necessary to satisfy the requirements of the EOAA. Specifically, the FLRA asked for comments regarding: Appropriate bargaining units under section 7112 of the Statute and section 431(d)(1)(B) of the EOAA; appropriate remedies for statutory violations based upon section 431(a) of the EOAA and sections 7118(a)(7) and 7105(a)(2)(I) of the Statute; possible security issues based upon the FLRA's ability to investigate, prosecute, and adjudicate cases in which non-public information could be at issue or discussed; possible conflict of interest/appearance of conflict of interest issues based upon section 431(d)(1)(B)(i) of the EOAA; possible constitutional issues based upon section 431(d)(1)(B)(ii) of the EOAA; concerns regarding political affiliation; and appropriate designation of the ''head of an agency'' under sections 7102(1), 7114(c)(1)–(3), and 7117(c)(3) of the Statute for each EOP office. No comments were received specifically in response to the notice.

Additionally, the FLRA informally invited comment directly from interested persons. In response, one comment noted that during the FLRA's investigation, prosecution, and adjudication of cases involving the EOP, the FLRA may receive documents that otherwise would not be subject to public disclosure through the Freedom of Information Act (FOIA). As the FLRA continues to review its regulations to determine whether modifications are necessary in light of the EOAA, the FLRA is requesting comments on this issue of information disclosure and the interests of the EOP. Once the FLRA receives comments, it will consider rulemaking on this issue, if necessary.

4. Summary of Amendments

As a result of the enactment of the EOAA, a number of amendments to the FLRA's regulations are necessary.

A. Section 2420.1 Purpose and scope

The FLRA proposes to amend this section to reflect the fact that the EOAA has made applicable Chapter 71 of Title 5 to the EOP.

B. Section 2421.2 Terms defined in 5 U.S.C. 7103(a)

The FLRA proposes to amend this section to incorporate applicable definitions found in the EOAA.

C. Section 2421.14 Appropriate unit

The FLRA proposes to amend this section to reflect that when making bargaining unit determinations for the eight offices listed in 3 U.S.C. 431(d)(2), pursuant to section 431 of the EOAA, the Regional Director shall exclude employees if it is determined that such exclusion is required because of a conflict of interest, an appearance of a conflict of interest, or the President's or Vice President's constitutional duties.

D. Section 2422.34(b) Rights and obligations during the pendency of representation proceedings

The FLRA proposes to amend this section to include 3 U.S.C. 431(d)(2) as one of the statutory grounds for a party to take action regarding the bargaining unit status of individual employees.

E. Section 2423.41 Action by the Authority; compliance with Authority decisions and orders

The FLRA proposes to amend this section to reflect that, with regard to employees covered by section 431 of the EOAA, on finding a violation, the Authority may not issue an order of reinstatement.

F. Section 2470.1 Purpose

The FLRA proposes to amend this section to reflect the fact that the EOAA has made applicable chapter 71 of title 5 to the Executive Office of the President.

G. Section 2470.2 Definitions

The FLRA proposes to amend this section to incorporate applicable definitions found in the EOAA.

H. Section 2472.1 Purpose

The FLRA proposes to amend this section to clarify that the regulations contained in this part do not apply to employing offices, employees, and representatives of those employees, who are subject to the provisions of the EOAA.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant economic impact on a substantial number of small entities. The amendments are required so that the FLRA can carry out its responsibilities under the EOAA.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small government. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record keeping requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Parts 2420, 2421, 2422, 2423, 2470, and 2472

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons stated in the preamble, the FLRA proposes to amend parts 2420, 2421, 2422, 2423, 2470, and 2472 of chapter XIV, title 5 of the Code of Federal Regulations as follows:

PART 2420—PURPOSE AND SCOPE

1. The authority citation for part 2420 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. The introductory text of § 2420.1 is revised to read as follows:

§ 2420.1 Purpose and scope.

The regulations contained in this subchapter are designed to implement the provisions of chapter 71 of title 5 and, where applicable, section 431 of title 3 of the United States Code. They prescribe the procedures, basic principles or criteria under which the Federal Labor Relations Authority or the General Counsel of the Federal Labor Relations Authority, as applicable, will:

* * * * *

PART 2421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

1. The authority citation for part 2421 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. In § 2421.2, paragraph (a) is revised to read as follows:

§ 2421.2 Terms defined in 5 U.S.C. 7103(a); General Counsel; Assistant Secretary.

(a) The terms *person, employee, agency, labor organization, dues, Authority, Panel, collective bargaining agreement, grievance, supervisor, management official, collective bargaining, confidential employee, conditions of employment, professional employee, exclusive representative, firefighter,* and *United States*, as used herein shall have the meanings set forth in 5 U.S.C. 7103(a). The *terms* covered employee, employee, employing office, and *agency*, when used in connection with the Presidential and Executive Office Accountability Act, 3 U.S.C. 401 *et seq.*, shall have the meaning set out in 3 U.S.C. 401(b), 431(b) and (d)(2). Employees who are employed in the eight offices listed in 3 U.S.C. 431(d)(2) are excluded from coverage if the Authority determines that such exclusion is required because of a conflict of interest, an appearance of a conflict of interest, or the President's or Vice President's constitutional responsibilities, in addition to the exemptions currently set forth in 5 U.S.C. 7103(a).

* * * * *

3. Section 2421.14 is revised to read as follows:

§ 2421.14 Appropriate unit.

Appropriate unit means that grouping of employees found to be appropriate for purposes of exclusive recognition under 5 U.S.C. 7111, and for purposes of allotments to representatives under 5 U.S.C. 7115(c), and consistent with the provisions of 5 U.S.C. 7112. For the eight offices listed in 3 U.S.C. 431(d)(2), in determining whether particular employees are to be included in an appropriate unit in a proceeding under part 2422 of this chapter, the Regional

Director shall exclude employees if it is determined that such exclusion is required because of a conflict of interest or appearance of a conflict of interest or because of the President's or Vice President's constitutional responsibilities, in addition to the standards set out in 5 U.S.C. 7112.

PART 2422—REPRESENTATION PROCEEDINGS

1. The authority citation for part 2422 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. In § 2422.34, paragraph (b) is revised to read as follows:

§ 2422.34 Rights and obligations during the pendency of representation proceedings.

* * * * *

(b) *Unit status of individual employees.* Notwithstanding paragraph (a) of this section and except as otherwise prohibited by law, a party may take action based on its position regarding the bargaining unit status of individual employees, pursuant to 3 U.S.C. 431(d)(2), 5 U.S.C. 7103(a)(2), and 7112(b) and (c): *Provided, however,* that its actions may be challenged, reviewed, and remedied where appropriate.

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for part 2423 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. In § 2423.41, paragraph (c) is amended to read as follows:

§ 2423.41 Action by the Authority; compliance with Authority decisions and orders.

* * * * *

(c) *Authority's order.* Upon finding a violation, the Authority shall, in accordance with 5 U.S.C. 7118(a)(7), issue an order directing the violator, as appropriate, to cease and desist from any unfair labor practice, or to take any other action to effectuate the purposes of the Federal Service Labor-Management Relations Statute. With regard to employees covered by 3 U.S.C. 431, upon finding a violation, the Authority's order may not include an order of reinstatement, in accordance with 3 U.S.C. 431(a).

* * * * *

PART 2470—GENERAL

1. The authority citation for part 2470 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7119, 7134.

2. Section 2470.1 is revised to read as follows:

§ 2470.1 Purpose.

The regulations contained in this subchapter are intended to implement the provisions of section 7119 of title 5 and, where applicable, section 431 of title 3 of the United States Code. They prescribe procedures and methods which the Federal Service Impasses Panel may utilize in the resolution of negotiation impasses when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party meditation, fail to resolve the disputes. It is the policy of the Panel to encourage labor and management to resolve disputes on terms that are mutually agreeable at any stage of the Panel's procedures.

3. In § 2470.2, paragraph (a) is revised to read as follows:

§ 2470.2 Definitions.

(a) The terms *agency, labor organization,* and *conditions of employment* as used herein shall have the meaning set forth in 5 U.S.C. 7103(a). When used in connection with 3 U.S.C. 431, the term *agency* as used in the Panel's regulations means an employing office as defined in 3 U.S.C. 401(a)(4).

* * * * *

PART 2472—IMPASSES ARISING PURSUANT TO AGENCY DETERMINATIONS NOT TO ESTABLISH OR TO TERMINATE FLEXIBLE OR COMPRESSED WORK SCHEDULES

1. The authority citation for part 2472 is revised to read as follows:

Authority: 5 U.S.C. 6131.

2. Section 2472.1 is revised to read as follows:

§ 2472.1 Purpose.

The regulations contained in this part are intended to implement the provisions of section 6131 of title 5 of the United States Code, but are not applicable to actions covered by section 431 of title 3 of the United States Code. They prescribe procedures and methods which the Federal Service Impasses Panel may utilize in the resolution of negotiations impasses arising from agency determinations not to establish or to terminate flexible and compressed work schedules.

Dated: June 26, 1998.

Kevin Kopper,

Director, Budget & Finance Division.

[FR Doc. 98–17503 Filed 6–30–98; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–29–AD]

Airworthiness Directives; First Technology Fire and Safety Ltd. Toilet Compartment Fire Extinguishers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to First Technology Fire and Safety Ltd. toilet compartment fire extinguishers. This proposal would require inspection of suspect fire extinguishers for leakage, and removal from service and replacement with serviceable parts if found leaking. This proposal is prompted by reports of leakage at the fire extinguisher's eutectic tip due to a design change. The actions specified by the proposed AD are intended to prevent fire extinguisher failure due to leakage, which in the event of a toilet compartment fire could result in an uncontained fire and damage to the aircraft.

DATES: Comments must be received by August 31, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–29–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''9-ad-engineprop@faa.dot.gov''. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Percival Aviation Ltd., The Sidings, Knowle, Fareham, Hampshire PO17 5LZ England; telephone 011 44 1329 833814, fax 011 44 1329 834013. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–29–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–29–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on certain First Technology Fire and Safety Ltd. toilet compartment fire extinguishers. The CAA advises that they have received reports of leakage at the fire extinguisher's eutectic tip due to a design change. This condition, if not corrected, could result in fire extinguisher failure due to leakage, which in the event of a toilet compartment fire could result in an uncontained fire and damage to the aircraft.

First Technology Fire and Safety Ltd. has issued Service Bulletin (SB) No. 26–110, dated January 1998, that specifies procedures for inspection of suspect fire extinguishers for leakage. The CAA classified this SB as mandatory and issued AD 007–11–97 in order to assure the safety of these fire extinguishers in the UK.

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

Since an unsafe condition has been identified that is likely to exist or develop on other fire extinguishers of the same type design registered in the United States, the proposed AD would require, within 3 months after the effective date of this AD, inspection of suspect fire extinguishers for leakage, and removal from service and replacement with serviceable parts if found leaking. The UK CAA AD specified a second inspection after the initial inspection; however, the FAA has determined that a second inspection is unnecessary due to the time that has passed from the publication of the UK CAA AD to the publication of this FAA NPRM. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 1,500 fire extinguishers of the affected design installed on the worldwide fleet. There are an unknown number of fire extinguishers installed on aircraft of U.S. registry. The FAA estimates that it would take approximately 3 minutes per fire extinguisher to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The manufacturer has advised the CAA that replacement parts would be provided at no charge to the operator. Based on these figures, the total cost impact of the proposed AD on worldwide operators is estimated to be $4,500.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

First Technology Fire and Safety Ltd.: Docket No. 98–ANE–29–AD.

Applicability: First Technology Fire and Safety Ltd. toilet compartment fire extinguisher, identified by serial and model number in First Technology Fire and Safety Ltd. Service Bulletin (SB) No. 26–110, dated January 1998. These fire extinguishers are installed on but not limited to Airbus A320, A330, A340; British Aerospace Bae 146, Bombardier CL–600–2B19 (CRJ), Dornier 328 Embraer EMB 145, and all Fokker Series aircraft.

Note 1: This airworthiness directive (AD) applies to each fire extinguisher identified in the preceding applicability provision,

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fire extinguisher failure due to leakage, which could result in an uncontained fire and damage to the aircraft, accomplish the following:

(a) Within 3 months after the effective date of this AD, perform a one time inspection of fire extinguishers for leakage, and replace leaking fire extinguishers with serviceable parts, in accordance with First Technology Fire and Safety Ltd. SB No. 26–110, dated January 1998.

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

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

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

Issued in Burlington, Massachusetts, on June 23, 1998.

Dated: June 23, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service

[FR Doc. 98–17416 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 240 and 249

[Release Nos. 33–7549; 34–40126; File No. S7–17–98]

RIN 3235–AH43

Segment Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rules.

SUMMARY: The Commission today proposes technical amendments to conform our reporting requirements with the Financial Accounting Standards Board's (''FASB'') recently adopted Statement of Financial Accounting Standards (''SFAS'') No. 131, governing disclosures relating to a business enterprise's operating segments.

DATES: We should receive comments by July 31, 1998.

ADDRESSES: Please send three copies of your comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Interested persons also may submit comments electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–17–98; please include this file number in the subject line if you use e-mail. Anyone can inspect and copy the comment letters in our public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. We will post electronically submitted comment letters on the Commission's Internet Web Site (www.sec.gov).

FOR FURTHER INFORMATION CONTACT: James R. Budge, Special Counsel, Division of Corporation Finance, at (202) 942–2950, Louise M. Dorsey, Assistant Chief Accountant, Division of Corporation Finance, at (202) 942–2960, or Robert F. Lavery, Assistant Chief Accountant, Office of the Chief Accountant, at (202) 942–4400, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today proposes technical amendments to Rules 3–03 [1] and 12–16 [2] of Regulation S–X,[3] Items 101 [4] and 102 [5] of Regulation S–K,[6] and Schedule 14A [7] in order to conform our reporting requirements with the FASB's recently adopted SFAS No. 131. We also propose to make consistent changes to Form 20–F [8] and to Sections 501.06 and 503 of the Codification of Financial Reporting Policies (''CFRP'').

I. Background

In 1976, the FASB issued SFAS No. 14, ''Financial Reporting for Segments of a Business Enterprise.'' SFAS No. 14 required corporations to disclose certain financial information by ''industry segment'' as defined in the statement and by geographic area. In December 1977, we adopted amendments to our rules to integrate the information to be furnished under SFAS No. 14 with the narrative and financial disclosures required in various disclosure forms.[9]

After extensive deliberations, including solicitation of public comments, the FASB adopted a number of fundamental changes to its standards for segment reporting by publishing SFAS No. 131 in June of 1997. SFAS No. 131 superseded SFAS No. 14 and established standards for reporting information about ''operating segments'' of an enterprise rather than following the ''industry segment'' standards that were in place previously. The Commission today proposes a number of technical changes to its reporting requirements to accommodate these recent modifications. This is in keeping with our long-standing position that we will look to the private sector for the promulgation of generally accepted accounting principles (''GAAP''),[10] and furthers our goal of integrating existing accounting information into the narrative disclosure in documents mandated by the federal securities laws. This release explains in detail the proposed changes.

II. Proposed Rule Changes

A. Operating Segment Disclosure

SFAS No. 14 required, and the Commission's current rules and forms require, disclosure along ''industry segment'' lines. An ''industry segment,'' as defined by SFAS No. 14, was ''a component of an enterprise engaged in providing a product or service or a group of related products and services primarily to unaffiliated customers * * * for a profit.'' [11] Recognizing that businesses often evaluate their operations using criteria not necessarily related to the products or services offered to the public, the FASB replaced the industry segment reporting standard with one that requires businesses to report financial information on the basis of ''operating segments.'' Under the new accounting standard, an operating segment is a component of a business, for which separate financial information is available, that management regularly evaluates in deciding how to allocate

[1] 17 CFR 210.3–03.

[2] 17 CFR 210.12–16.

[3] 17 CFR Part 210.

[4] 17 CFR 229.101.

[5] 17 CFR 229.102.

[6] 17 CFR Part 229.

[7] 17 CFR240.14a–101.

[8] 17 CFR249.220f.

[9] Release No. 33–5893 (December 23, 1977) [42 FR 65554].

[10] Section 101 of the Codification of Financial Reporting Policies. The Commission initially issued its administrative policy concerning financial statements in 1938 and updated it in 1973 to recognize the establishment of the FASB.

[11] SFAS No. 14, ¶ 10.a.

resources and assess performance.[12] Specifically, SFAS No. 131 states that an operating segment is a component of a business:

- That engages in activities from which it may earn revenues and incur expenses (including revenues and expenses relating to transactions with other components of the same business);
- Whose operating results are regularly reviewed by the enterprise's ''chief operating decision maker'' [13] to make decisions about resources to be allocated to the segment and assess its performance; and
- For which discrete financial information is available.

Under SFAS No. 131, a company generally must report separately information about an operating segment that meets any of the following thresholds:

- Its reported revenue, including both sales to external customers and intersegment sales and transfers, is 10 percent or more of the combined revenue of all reported operating segments, whether generated inside or outside of the company;
- Its reported profit or loss is 10 percent or more of the greater of: (1) the combined reported profit of all operating segments that did not report a loss or (2) the combined reported loss of all operating segments that did report a loss; or
- Its assets are 10 percent or more of the combined assets of all operating segments.[14]

SFAS No. 131 not only changed how a business should identify its segments, it also changed the types of information to be disclosed for each segment. SFAS No. 14 required an issuer to report its revenues, operating profit (loss),[15] and identifiable assets [16] if a segment's revenues, operating profit, or identifiable assets were 10% or more of all the industry segments' revenues, operating profits, or assets, respectively. Issuers were to reconcile these three items to the consolidated amounts in the financial statements. In addition, SFAS No. 14 required issuers to report for each segment depreciation, depletion and amortization, capital expenditures, equity in net income of unconsolidated subsidiary or equity-method investee, and the effect of a change in accounting principle on operating profit (loss).

By contrast, SFAS No. 131 requires that a company provide for each reportable segment quantitative disclosure of two basic items—total assets and a measure of profit or loss. The new standard defines neither segment profit (loss) nor assets. Instead, management must determine what they will report based on how they operate their business. In addition, companies must disclose the following items for each segment, but only if management includes them in measuring segment profit or loss:

- Revenues from external customers;
- Revenues from other operating segments;
- Interest income; [17]
- Interest expense; [18]
- Depreciation, depletion and amortization;
- Unusual items;
- Equity in net income of equity method investees;
- Income taxes;
- Extraordinary items; and
- Significant non-cash items other than depreciation, depletion, and amortization.

A company also must disclose for each segment the amount of investment in equity-method investees and total expenditures for additions to long-lived assets if it includes the amount in its determination of segment assets.

The company must reconcile the totals of the reportable segments' amounts for all of these listed items to consolidated amounts. The FASB required more items to be disclosed per segment under the new standard because analysts have long wanted more information and most of the items required should be already available in management reports.

We propose to amend our narrative and financial reporting rules to conform current segment reporting requirements to the FASB's revised accounting standards. The proposals would, however, retain certain requirements relating to disclosure of principal products or services and major customers that traditionally have differed from the FASB standards.[19] We will address below each of the proposals.[20]

1. Description of Business—Item 101

Regulation S–K Item 101(b) [21] currently requires an issuer to disclose financial information with respect to its ''industry segments'' in the business description sections of documents that it files with the Commission. The proposals would amend Item 101 to conform its disclosure requirements to current GAAP as defined in SFAS No. 131, thereby requiring disclosure about an issuer's ''operating segments'' rather than its ''industry segments.'' [22] Other proposals specific to Item 101 follow.

a. Principal Products or Services

Item 101 historically has required a discussion, by segment, of the principal products produced and services rendered by the issuer, as well as the principal markets for and methods of distribution of each segment's products and services. On the other hand, GAAP required, and continues to require, disclosure of principal products and services on an enterprise-wide basis, without reference to principal markets and methods of distribution. We continue to believe that the segment information relating to principal products or services, principal markets and distribution methods is useful to investors and propose not to change this provision.

Item 101 further requires registrants to disclose the amounts of revenues from each class of similar products and services based on quantitative

[12] We refer to this below as the ''management approach.''

[13] The term ''chief operating decision maker'' identifies a function, not a person with that title. This person's function is to allocate resources to and assess the performance of the company's segments. A chief operating decision maker frequently might be a company's chief executive officer or chief operating officer, but it also could be a group of decision makers, for example, the company's president, executive vice presidents and others.

[14] SFAS No. 131, ¶ 18.

[15] SFAS No. 14 specifically defined segment operating profit to be revenues less all operating expenses, which included depreciation and amortization. An issuer was to allocate operating expenses that were not directly traceable to a particular segment on a reasonable basis among the segments for whose benefit the expenses were incurred. The standard required an explanation of the amount and nature of any unusual or nonrecurring items added or deducted in determining operating profit of a segment. In addition, the standard defined any restructuring charges related to a specific segment as operating expenses of that segment and issuers were to deduct these charges in calculating that segment's operating profit or loss.

SFAS No. 14 excluded certain items in calculating segment profit. They were: general corporate expenses; interest expense (except included for financial institutions, insurance and leasing operations); equity in income (loss) of unconsolidated subsidiaries or equity investees; discontinued operations; extraordinary items; and, the effects of changes in accounting.

[16] Segment assets included all tangible and intangible assets used by the segment, including goodwill, other intangibles, and deferred income and expenses.

[17] Certain enterprises may report segment interest revenue net of its interest expense. *See* SFAS 131, ¶ 27.

[18] *Id.*

[19] *See* Sections II.A.1a. and II.B.2.

[20] The Commission also is proposing several technical amendments to update cross references to the new accounting standard. These revisions would be made to Rules 3–03(e) and 12–16 of Regulation S–X and Item 14(b)(2)(ii)(A)(3)(*i*) of Schedule 14A.

[21] 17 CFR 229.101(b).

[22] We also propose to retain the current provisions allowing an issuer to refer to other sections of the registration statement that include the required information in order to avoid duplicative disclosure.

thresholds. Specifically, the issuer must state the amount or percentage of total revenue contributed by any class of similar products or services that accounted for 10 percent or more of consolidated revenue in any of the last three fiscal years, or if total revenue did not exceed $50,000,000 during any of those three fiscal years, 15 percent or more of consolidated revenue.[23] SFAS No. 131 requires disclosure of revenues from external customers for each product and service or each group of similar products and services unless it is impracticable to do so. Because SFAS No. 131 requires disclosure regardless of amount, unless impracticable, it appears that the new accounting standard may require more disclosure than Item 101. In light of this, we seek comment as to whether we need to maintain the quantitative thresholds of Item 101(c)(1)(i). If so, should they be raised or lowered, or should we simply follow the standard set out in paragraph 37 of SFAS No. 131, which provides for no quantitative threshold?

b. Retroactive Restatement of Information

Item 101 requires issuers to restate retroactively previously reported financial information when there has been a material change in the way they group products or services into industry segments and that change affects the reported segment information.[24] By contrast, SFAS No. 131 provides that if an issuer changes the structure of its internal organization in a manner that causes the composition of its reportable segments to change, the issuer must restate the corresponding information for earlier periods unless it is impracticable to do so.[25] We propose to conform the language of Item 101 with the language of SFAS No. 131 regarding when a company must restate information.

c. Appendix A

Item 101 includes an appendix that illustrates how to present the required industry segment information in tabular form. The Commission proposes to eliminate this appendix and rely instead on the SFAS No. 131 instructions governing how to present information relating to operating segments.

2. Property—Item 102

Regulation S–K Item 102 requires descriptions of an issuer's principal plants, mines, and other ''materially important'' physical properties. Companies must identify the industry segment(s) that use the described properties.[26] We propose to update the item by substituting the term ''segment'' for ''industry segment.''

3. Management's Discussion and Analysis—Item 303

Regulation S–K Item 303, which requires management to include a discussion and analysis of an issuer's financial condition and results of operations, provides:

> Where in the registrant's judgment a discussion of segment information or other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant, reportable segment or other subdivision of the business and on the registrant as a whole.[27]

The Commission historically has relied on the FASB's definition for segment disclosure in Management's Discussion and Analysis (''MD&A''). The Commission intends to continue to rely on the FASB's standards, thereby allowing issuers to use the management approach under SFAS No. 131. No rule change is necessary. Under the language in Item 303, a multi-segment registrant preparing a full fiscal year MD&A should analyze revenues, profitability (or losses) and total assets of each significant segment in formulating a judgment as to whether a discussion of segment information is necessary to an understanding of the business.

While we propose no changes to the language of Item 303, we do propose to amend CFRP 501.06.a, which provides informal guidance about MD&A. The proposed revisions would accord the Codification's language with that of SFAS No. 131, and would add a new footnote, that would read:

> Where consistent with the registrant's internal management reports, SFAS No. 131 permits measures of segment profitability that differ from GAAP measures of profit on a consolidated basis, or that exclude items included in the determination of the registrant's net income. In a note to the financial statements, however, the registrant must reconcile key segment amounts to the corresponding items reported in the consolidated financial statements. Similarly, the Commission expects that the discussion of a segment whose profitability is determined on a basis that differs from GAAP on a consolidated basis or that excludes the effects of items attributable to the segment also will address the applicable reconciling items. For example, if a material charge for restructuring or asset impairment relates to a specific segment, but is not included in management's measure of the segment's operating profit or loss, registrants would be expected to disclose the applicable portion of the charge and the circumstances of its incurrence. Likewise, the Commission expects that the effects of management's use of non-GAAP measures will be explained in a balanced and informative manner, and the disclosure will include a discussion of how that segment's performance has affected the registrant's GAAP financial statements.

4. Form 20–F

Form 20–F is the registration statement and annual report for foreign private issuers promulgated under the Securities Exchange Act of 1934 (''Exchange Act'').[28] Form 20–F currently permits a foreign registrant that presents financial statements according to United States GAAP to omit SFAS No. 14 disclosures if it provides the information required by Item 1 of the form. We propose replacing the reference to SFAS No. 14 with one to SFAS No. 131.[29]

Item 1 of Form 20–F requires registrants to disclose sales and revenues by categories of activity and geographical areas, as well as to discuss each category of activities that provide a disproportionate contribution to total ''operating profit'' of the registrant. We contemplate no change to these requirements.

B. Other Reporting Requirements

SFAS No. 14 also set standards for disclosure of certain enterprise-wide information where the issuer did not provide the information in the segment disclosure, and Regulation S–K currently reflects those standards. We propose to update our rules to conform with the revised requirements of SFAS No. 131, as we explain below.

1. Geographic Areas

Regulation S–K Item 101(d) currently requires an issuer to disclose for each of the issuer's last three fiscal years the amounts of revenue, operating profit or loss, and identifiable assets attributable to each of its geographic areas. It also requires disclosure of the amount of export sales in the aggregate or by appropriate geographic area to which the issuer makes sales.

Under SFAS No. 131, issuers must disclose revenues from external customers deriving from:

- The issuer's country of domicile;
- All foreign countries in total from which the issuer derives revenues; and
- An individual foreign country, if material.

An issuer also must disclose the basis for attributing revenues from external customers to individual countries.

[23] 17 CFR 229.101(c)(1)(i).

[24] 17 CFR 229.101(b)(1)(ii).

[25] *See* SFAS No. 131, ¶ 34.

[26] f17 CFR 229.102.

[2] 17 CFR 229.303(a).

[28] 15 U.S.C. 78a *et seq.*

[29] *See* proposed Instruction 3 to Item 17 of Form 20–F.

The new accounting standard also requires an issuer to disclose long-lived assets other than financial instruments, long-term customer relationships of a financial institution, mortgage and other servicing rights, deferred policy acquisition costs, as well as deferred tax assets located in its country of domicile and in all foreign countries, in total, in which the enterprise holds assets. If assets in an individual foreign country are material, an issuer must disclose those assets separately.[30]

We propose to revise our disclosure requirements to conform entirely with the new accounting standard. Consequently, we would no longer require issuers to disclose geographic information relating to: individual geographic areas (except where information relating to an individual country is material); profitability; or export sales.[31]

2. Major Customers

Since the adoption of SFAS No. 14, GAAP has required disclosure of revenues from major customers.[32] SFAS No. 131 now requires issuers to disclose the amount of revenues from each external customer that amounts to 10 percent or more of its revenue as well as the identity of the segment(s) reporting the revenues. The accounting standards, however, have never required issuers to identify major customers. On the other hand, Regulation S–K Item 101 historically requires naming a major customer if sales to that customer equal 10 percent or more of the issuer's consolidated revenues and if the loss of the customer would have a material adverse effect on the issuer and its subsidiaries.[33] Since we continue to believe that the identity of major customers is material information to investors, we propose to retain this Regulation S–K requirement.

C. Segment Information Added to Interim Reports

GAAP historically has not required segment reporting in interim financial statements. In SFAS No. 131, the FASB changed its position. Under the new accounting standards, issuers must include in condensed financial statements of interim periods issued to shareholders the following information about each reportable segment:

- Revenues from external customers;
- Intersegment revenues;
- A measure of segment profit or loss;
- Total assets for which there has been a material change from the amount disclosed in the last annual report;
- A description of differences from the last annual report in the basis of segmentation or in the basis of measurement of segment profit or loss; and
- A reconciliation of the total of the reportable segments' measures of profit or loss to the enterprise's consolidated income before income taxes, extraordinary items, discontinued operations, and the cumulative effect of changes in accounting principles.[34]

Thus, for the first time, issuers must disclose in their interim financial statements, including those filed with the Commission, condensed financial information about the segments they have chosen as reportable segments for purposes of their annual reports. In making this change, the FASB explained:

> This statement [SFAS No. 131] requires disclosure of limited segment information in condensed financial statements that are included in quarterly reports to shareholders. * * * Statement 14 did not apply to those condensed financial statements because of the expense and the time required for producing segment information under Statement 14. A few respondents to the Exposure Draft said that reporting segment information in interim financial statements would be unnecessarily burdensome. However, users contended that, to be timely, segment information is needed more often than annually and that the difficulties of preparing it on an interim basis could be overcome by an approach like the one in this Statement. Managers of many enterprises agree and have voluntarily provided segment information for interim periods.
>
> The Board decided that the condensed financial statements in interim reports issued to shareholders should include disclosure of segment revenues from external customers, intersegment revenues, a measure of segment profit or loss, material changes in segment assets, differences in the basis of segmentation or the way segment profit or loss was measured in the previous annual period, and a reconciliation to the enterprise's total profit or loss. That decision is a compromise between the needs of users who want the same segment information for interim periods as that required in annual financial statements and the costs to preparers who must report the information. Users will have some key information on a timely basis. Enterprises should not incur significant incremental costs to provide the information because it is based on information that is used internally and therefore already available.[35]

SFAS No. 131 is effective for fiscal years beginning after December 15, 1997.[36] The FASB specified, however, that issuers need not apply the new provisions to interim financial statements in the initial year of application, but they must report comparative information for interim periods in that initial year in financial statements for interim periods in the second year of application.[37] Consequently, through the Rules of General Application of Regulation S–X, which state that financial statements not prepared in accordance with GAAP will be presumed to be misleading or inaccurate,[38] we expect to see comparative segment information reported in filings containing interim financial statements for periods ending on or after March 15, 1999. No changes to our rules are necessary to implement the FASB's changes in this regard.

III. General Request for Comment

The Commission is proposing these amendments to conform its disclosure requirements to GAAP, as modified by SFAS No. 131. Today we solicit public comments specifically addressing whether these proposed changes adequately address the new accounting standards. We also seek comment about whether other amendments are appropriate for that purpose.

We request comment on whether the proposed revisions, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Act and the Exchange Act. We will consider these comments in complying with our responsibilities under Section 23(a)(2) of the Exchange Act.[39]

Section 2(b) of the Securities Act[40] and Section 3(f) of the Exchange Act[41] require the Commission, when engaged in rulemaking that requires a public interest finding, to consider, in addition to the protection of investors, whether

[30] *See* SFAS No. 131, ¶ 38.

[31] The proposed changes would include eliminating Appendix B of Regulation S–K Item 101, which illustrates how to present the currently-required information. We also would revise Instruction 2 to Item 101, which provides guidance about materiality analyses based on ''interperiod comparability,'' to reflect the elimination of the requirements to disclose the quantitative geographic information once required by SFAS No. 14.

[32] SFAS No. 30 amended SFAS No. 14 and retained this provision to disclose revenues from major customers.

[33] 17 CFR 229.101(c)(1)(vii).

[34] *See* SFAS No. 131¶ 33. The FASB also amended Accounting Principles Board Opinion No. 28 (''APB No. 28''), governing interim financial reporting, to reflect this change. The stated purpose of APB No. 28 is ''to clarify the application of accounting principles and reporting practices to interim financial information, including interim financial statements and summarized interim financial data of publicly traded companies issued for external reporting purposes.'' APB No. 28 ¶ 1.

[35] SFAS No. 131 ¶ 98 and ¶ 99.

[36] SFAS No. 131 ¶ 40.

[37] *Id.*

[38] *See* 17 CFR 210.4–01(a)(1).

[39] 15 U.S.C. 78w(a)(2).

[40] 15 U.S.C. 77b(b).

[41] 15 U.S.C. 78c(f).

the action will promote efficiency, competition and capital formation. Therefore, we solicit comment on what effect the proposed changes, if adopted, may have on efficiency, competition and capital formation.

Please send three copies of your comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Interested persons also may submit comments electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–17–98; please include this file number in the subject line if you use e-mail. Anyone can inspect and copy the comment letters in our public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. We will post electronically submitted comment letters on our Internet Web Site (www.sec.gov).

IV. Cost-Benefit Analysis

We anticipate that these proposals, if adopted, would not impose any new regulatory costs on registrants, since the changes would simply conform our disclosure requirements with current accounting principles, to which registrants are already subject. To the contrary, if we do not act to conform our rules to the revised accounting standards, costs will rise because of the confusion registrants might experience in determining which set of standards to apply to their disclosure documents, the standards under SFAS No. 14, as currently codified in Commission rules, or the revised standards of SFAS No. 131. Some registrants may determine to resolve the conflict by producing and providing both sets of information. This duplicative disclosure would be a wasteful expenditure of business resources that we could avoid by the adopting the changes proposed today. Commenters should address the costs and benefits of the proposals, and provide supporting empirical data for any positions advanced.

V. Summary of Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[42] Arthur Levitt, Chairman of the Commission, certified that the amendments proposed in this release would not, if adopted, have significant impact on a substantial number of small entities. The reason for this certification is that the proposed amendments are intended to conform rules and forms to GAAP, as recently amended, to which registrants are already subject. We include the Certification in this release as Attachment A and encourage written comments relating to it. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VI. Paperwork Reduction Act[43]

We anticipate that information collection burden hours would not change as a result of the technical amendments we propose today.

VII. Codification Update

The ''Codification of Financial Report Policies'' announced in Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] is proposed to be updated to:

1. Modify Section 501 by revising Section 501.06.a. to read as follows:

a. Segment Analysis

In formulating a judgment as to whether a discussion of segment information is necessary to an understanding of the business, a multi-segment registrant preparing a full fiscal year MD&A should analyze revenues, profitability, and the cash needs of its significant segments.[44] To the extent any segment contributes in a materially disproportionate way to those items, or where discussion on a consolidated basis would present an incomplete and misleading picture of the enterprise, segment discussion should be included. This may occur, for example, when there are legal or other restrictions upon the free flow of funds from one segment, subsidiary, or division of the registrant to others; when known trends, demands, commitments, event, or uncertainties within a segment are reasonably likely to have a material effect on the business as a whole; when the ability to dispose of identified assets of a segment may be relevant to the financial flexibility of the registrant; and in other circumstances in which the registrant concludes that segment analysis is appropriate to an understanding of its business.

The following example illustrates segment disclosure for a manufacturer with two segments. The two segments contributed to segment profit amounts that were disproportionate to their respective revenues. The registrant discusses sales and segment profit trends, factors explaining such trends, and where applicable, known events that will impact future results of operations of the segment.

NET SALES BY SEGMENT

Segments	Year 3			Year 2		Year 1
	($ million)	Percent of total	($ million)	Percent of total	($ million)	Percent of total
Segment I	585	55	479	53	420	48
Segment II	*472*	*45*	*433*	*47*	*457*	*52*
Total Sales	1057	100	912	100	877	100

[42] 5 U.S.C. 605(b).

[43] 44 U.S.C. 3501 *et seq.*

[44] Where consistent with the registrant's internal management reports, SFAS No. 131 permits measures of segment profitability that differ from GAAP measures of profit on a consolidated basis, or that exclude items included in the determination of the registrant's net income. In a note to the financial statements, however, the registrant must reconcile key segment amounts to the corresponding items reported in the consolidated financial statements. Similarly, the Commission expects that the discussion of a segment whose profitability is determined on a basis that differs from GAAP on a consolidated basis or that excludes the effects of items attributable to the segment also will address the applicable reconciling items. For example, if a material charge for restructuring or asset impairment relates to a specific segment, but is not included in management's measure of the segment's operating profit or loss, registrants would be expected to disclose the applicable portion of the charge and the circumstances of its incurrence. Likewise, the Commission expects that the effects of management's use of non-GAAP measures will be explained in a balanced and informative manner, and the disclosure will include a discussion of how that segment's performance has affected the registrant's GAAP financial statements.

Year 3 vs. Year 2

Segment I sales increased 22% in Year 3 over the Year 2 period. The increase included the effect of the acquisition of Corporation T. Excluding this acquisition, sales would have increased by 16% over Year 2. Product Line A sales increased by 18% due to a 24% increase in selling prices, partially offset by lower shipments. Product Line B sales increased by 35% due to a 17% increase in selling prices and a 15% increase in shipment volume.

Segment II sales increased 9% due to a 12% increase in selling prices partly offset by a 3% reduction in shipment volume.

Year 2 vs. Year 1

Segment I sales increased 14% in Year 2. Product Line A sales increased 22%, in spite of a slight reduction in shipments, because of a 23% increase in selling prices.

Product Line B sales declined 5% due mainly to a 7% decrease in selling prices, partially offset by higher shipments.

The 5% decline in Segment II sales reflected a 3% reduction in selling prices and a 2% decline in shipments.

The substantial increases in selling prices of Product Line A during Year 3 and Year 2 occurred primarily because of heightened worldwide demand which exceeded the industry's production capacity. The Company expects these conditions to continue for the next several years. The Company anticipates that shipment volumes of Product Line A will increase as its new production facility reaches commercial production levels in Year 4.

Segment II shipment volumes have declined during the past two years primarily because of the discontinuation of certain products that were marginally profitable and did not have significant growth potential.

PROFIT BY SEGMENT

Segments	Year 3			Year 2		Year 1
	($ million)	Percent of total	($ million)	Percent of total	($ million)	Percent of total
Segment I	126	75	108	68	67	55
Segment II	42	25	51	32	54	45
Segment Profit	168	100	159	100	121	100

Year 3 vs. Year 2

Segment I profit was $18 million (17%) higher in Year 3 than in Year 2. This increase includes the effects of higher sales prices and slightly improved margins on Product Line A, higher shipments of Product Line B and the acquisition of Corporation T. Excluding this acquisition, Segment I profit would have been 11% higher than in Year 2. Partially offsetting these increases are costs and expenses of $11 million related to new plant start-up, slightly reduced margins on Product Line B and a $9 million increase in research and development expenses.

Segment II profit declined $9 million (18%) due mainly to substantially higher costs in Year 3 resulting from a 23% increase in average raw material costs which could not be fully recovered through sales prices increases. The Company expects that Segment II margins will continue to decline, although at a lesser rate than in Year 3 as competitive factors limit the Company's ability to recover cost increases.

Year 2 vs. Year 1

Segment I profit was $41 million (61%) higher in Year 2 than in Year 1. After excluding the effect of the $34 million non-recurring charge for the early retirement program in Year 1, Segment I profit in Year 2 was $18 million (27%) higher than in Year 1. This increase reflected higher prices and a corresponding 21% increase in margins on Product Line A, and a 17% increase in margins on Product Line B due primarily to costs reductions resulting from the early retirement program.

Segment II profit declined about $3 million (6%) due mainly to lower selling prices and slightly reduced margins in Year 2.

2. Replace paragraphs .01, .02 and .03 of Section 503 with new paragraph .01, to include the text of Section I of this release captioned ''Background'' and with new paragraph .02 to include the text of Section II.B.2 of this release captioned ''Major Customers.''

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

VIII. Statutory Basis

The Commission proposes the rule changes explained in this release pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act and Sections 3, 12, 13, 14, 15(d) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 210, 229, 240 and 249

Accounting, Registration requirements, Reporting and recordkeeping requirements, Securities.

Text of the Proposals

Accordingly, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. By amending Section 210.3–03 by revising the first sentence of paragraph (e) to read as follows:

§ 210.3–03 Instructions to income statement requirements.

* * * * *

(e) Disclosures regarding segments required by generally accepted accounting principles shall be provided for each year for which an audited statement of income is provided. * * *

3. By amending § 210.12–16 by revising footnote one to the table to read as follows:

§ 210.12–16 Supplementary insurance information.

* * * * *

[1] Segments shown should be the same as those presented in the footnote disclosures called for by generally accepted accounting principles.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

4. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

5. By amending § 229.101 (Item 101 of Regulation S–K) by revising the introductory text of paragraph (b), paragraph (b)(1) and paragraph (d); in paragraphs (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), (c)(1)(iv), and (c)(1)(v), by revising the term ''industry segment'' to read ''segment''; in paragraph (c)(1) introductory text and in Instruction 1 in the Instructions to Item 101, by revising the term ''industry segments'' to read ''segments''; by revising Instruction 2 to Item 101, and by removing Appendix A—Industry Segments, and Appendix B—Foreign and Domestic Operations and Export Sales.

§ 229.101 (Item 101) Description of business.

* * * * *

(b) *Financial information about segments.* Report for each segment, as defined by generally accepted accounting principles, revenues from external customers, a measure of profit or loss and total assets. A registrant must report this information for each of the last three fiscal years or for as long as it has been in business, whichever period is shorter. If the information provided in response to this paragraph (b) conforms with generally accepted accounting principles, a registrant may include in its financial statements a cross reference to this data in lieu of presenting duplicative information in the financial statements; conversely, a registrant may cross reference to the financial statements.

(1) If a registrant changes the structure of its internal organization in a manner that causes the composition of its reportable segments to change, the registrant must restate the corresponding information for earlier periods, including interim periods, unless it is impracticable to do so. Following a change in the composition of its reportable segments, a registrant shall disclose whether it has restated the corresponding items of segment information for earlier periods. If it has not restated the items from earlier periods, the registrant shall disclose in the year in which the change occurs segment information for the current period under both the old basis and the new basis of segmentation, unless it is impracticable to do so.

* * * * *

(d) *Financial information about geographic areas.* (1) State for each of the registrant's last three fiscal years, or for each fiscal year the registrant has been engaged in business, whichever period is shorter:

(i) Revenues from external customers attributed to:

(A) The registrant's country of domicile;

(B) All foreign countries, in total, from which the registrant derives revenues; and

(C) Any individual foreign country, if material. Disclose the basis for attributing revenues from external customers to individual countries.

(ii) Long-lived assets, other than financial instruments, long-term customer relationships of a financial institution, mortgage and other servicing rights, deferred policy acquisition costs, and deferred tax assets, located in:

(A) The registrant's country of domicile;

(B) All foreign countries, in total, in which the registrant holds assets; and

(C) Any individual foreign country, if material.

(2) A registrant shall report the amounts based on the financial information that it uses to produce the general-purpose financial statements. If providing the geographic information is impracticable, the registrant shall disclose that fact. A registrant may wish to provide, in addition to the information required by paragraph (d)(1) of this section, subtotals of geographic information about groups of countries. To the extent that the disclosed information conforms with generally accepted accounting principles, the registrant may include in its financial statements a cross reference to this data in lieu of presenting duplicative data in its financial statements; conversely, a registrant may cross-reference to the financial statements.

(3) A registrant shall describe any risks attendant to the foreign operations and any dependence on one or more of the registrant's segments upon such foreign operations, unless it would be more appropriate to discuss this information in connection with the description of one or more of the registrant's segments under paragraph (c) of this section.

(4) If the registrant includes, or is required by Article 3 of Regulation S–X (17 CFR 210), to include, interim financial statements, discuss any facts relating to the information furnished under this paragraph (d) that, in the opinion of management, indicate that the three year financial data for geographic areas may not be indicative of current or future operations. To the extent necessary to the discussion, include comparative information.

Instructions to Item 101

* * * * *

2. Base the determination of whether information about segments is required for a particular year upon an evaluation of interperiod comparability. For instance, interperiod comparability would require a registrant to report segment information in the current period even if not material under the criteria for reportability of SFAS No. 131 if a segment has been significant in the immediately preceding period and the registrant expects it to be significant in the future.

* * * * *

6. By amending § 229.102 by revising the term ''industry segment(s)'' in the introductory paragraph to read ''segment(s)''.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.14a–101 [Amended]

8. By amending § 240.14a–101(Schedule 14A) in Item 14(b)(2)(ii)(A)(*3*)(*i*) by revising the phrase ''industry segments'' to read ''segments''.

PART 249—FORM, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted:

* * * * *

10. By amending Form 20–F (referenced in § 249.220f) by removing

the term ''SFAS 14'' from Instruction 3 to Item 17 and inserting the term ''SFAS No. 131'' in its place.

[**Note:** The text of Form 20–F does not, and the amendment will not, appear in the Code of Federal Regulations]

Dated: June 25, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Attachment A—Regulatory Flexibility Act Certification

(**Note:** Attachment A to the Preamble will not appear in the Code of Federal Regulations)

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to certain rules, forms and policies contained in Securities Act Release No. 33–7549, if adopted, will not have a significant economic impact on a substantial number of small entities. The amendments will conform Commission rules with accounting standards recently adopted by the Financial Accounting Standards Board. Since registrants are already subject to these standards, the proposed amendments would not impose any new burden on them.

June 24, 1998

Arthur Levitt,

Chairman.

[FR Doc. 98–17432 Filed 6–30–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[REG–119227–97]

RIN 1545–AV71

Kerosene Tax; Aviation Fuel Tax; Tax on Heavy Trucks and Trailers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule, notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the kerosene and aviation fuel excise taxes and the tax on the first retail sale of certain tractors, truck, trailer, and semitrailer chassis and bodies. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by September 29, 1998. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for Wednesday, November 4, 1998, must be received by September 29, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–119227–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8:00 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–119227–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Frank Boland (202) 622–3130; concerning submissions and the hearing, LaNita VanDyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by August 31, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this notice of proposed rulemaking is in §§ 48.4052–1, 48.4082–7(a), 48.4082–8(e), 48.4091–3(c), 48.4101–2(a)(4), 48.4101–3(d), and 48.6427–11. This information is required to support exempt transactions and to inform consumers of the type of fuel that is being purchased. The likely respondents are businesses and other for-profit organizations.

Estimated total annual reporting burden: 3,340 hours.

The estimated annual burden per respondent varies from .20 hours to 1 hour, depending on individual circumstances, with an estimated average of .29 hour.

Estimated number of respondents: 11,600.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** provide rules relating to the kerosene tax, certain aviation fuel tax refunds allowed by section 4091(d), and registration requirements for certain heavy vehicle manufacturers and retailers. The text of those regulations also serves as the text of these proposed regulations relating to kerosene. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these

regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare and submit the exemption certificates described in these regulations (many of which are similar to certificates that are already in use) is minimal and will not have a significant impact on those small entities that choose to provide the certificates. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

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

A public hearing has been scheduled for Wednesday, November 4, 1998, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

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

Persons that wish to present oral comments at the hearing must submit comments by September 29, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic by September 29, 1998.

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

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

Drafting Information

The principal author of these regulations is Frank Boland, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 48 is proposed to be amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 is amended by adding entries in numerical order to read in part as follows:

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

Section 48.4052–1 also issued under 26 U.S.C. 4052 * * *

Sections 48.4082–6, 48.4082–7, and 48.4082–8 also issued under 26 U.S.C. 4082 * * *

Section 48.4101–3 also issued under 26 U.S.C. 4101(a) * * *

Sections 48.6427–10 and 48.6427–11 also issued under 26 U.S.C. 6427(n) * * *

Par. 2. In subpart H, § 48.4052–1 is added to read as follows:

§ 48.4052–1 Special rule.

After June 30, 1998, the sale of an article is a taxable sale unless the seller has in good faith accepted from the purchaser a statement that the purchaser executed in good faith and that is in substantially the same form as the certificate described in § 145.4052–1(a)(6) of this chapter, except that the statement must be signed under penalties of perjury and need not include a registration number.

Par. 3. Section 48.4081–1 is amended as follows:

1. Paragraph (b) is amended by adding the definition of kerosene.

2. Paragraph (d) is revised.

The addition and revision read as follows:

§ 48.4081–1 Taxable fuel; definitions.

* * * * *

(b) * * *

Kerosene means—

(1) The two grades of kerosene (No. 1–K and No. 2–K) described in ASTM Specification D 3699; and

(2) Kerosene-type jet fuel described in ASTM Specification D 1655 and military specifications MIL–T–5624R and MIL–T–83133D (Grades JP–5 and JP–8). For availability of ASTM and military specification material, see § 48.4081–1(c)(2)(i).

* * * * *

(d) *Effective date.*

(1) Except as provided in paragraph (d)(2) of this section, this section is applicable January 1, 1994.

(2) In paragraph (b) of this section—

(i) The definition of aviation gasoline and the third sentence in the definition of terminal are applicable January 2, 1998; and

(ii) The definition of kerosene is applicable July 1, 1998.

Par. 4. Sections 48.4082–6, 48.4082–7, 48.4082–8, 48.4082–9 and 48.4082–10 are added to read as follows:

§ 48.4082–6 Kerosene; treatment as diesel fuel in certain cases.

[The text of this proposed section is the same as the text of § 48.4082–6T published elsewhere in this issue of the **Federal Register**.]

§ 48.4082–7 Kerosene; notice required with respect to dyed kerosene.

[The text of this proposed section is the same as the text of § 48.4082–7T published elsewhere in this issue of the **Federal Register**.]

§ 48.4082–8 Kerosene; exemption for aviation-grade kerosene.

[The text of this proposed section is the same as the text of § 48.4082–8T published elsewhere in this issue of the **Federal Register**.]

§ 48.4082–9 Kerosene; exemption from non-fuel feedstock purposes.

[The text of this proposed section is the same as the text of § 48.4082–9T published elsewhere in this issue of the **Federal Register**.]

§ 48.4082–10 Kerosene; additional exemption from floor stocks tax.

[The text of this proposed section is the same as the text of § 48.4082–10T published elsewhere in this issue of the **Federal Register**.]

Par. 5. Section 48.4091–3 is added to read as follows:

§ 48.4091–3 Aviation fuel; conditions to allowance of refunds of aviation fuel tax under section 4091(d).

[The text of this proposed section is the same as the text of § 48.4091–3T published elsewhere in this issue of the **Federal Register**.]

Par. 6. Section 48.4101–2 is amended by adding paragraph (a)(4) to read as follows:

§ 48.4101–2 Information reporting.

(a) * * *

(4) *Registered aviation fuel producers.*

[The text of this proposed paragraph is the same as the text of § 48.4101–2T(a)(4) published elsewhere in this issue of the **Federal Register**].

§ 48.6427–10 Claims with respect to kerosene.

[The text of this proposed section is the same as the text of § 48.6427–10T published elsewhere in this issue of the **Federal Register**.]

§ 48.6427–11 Special rules for claims by registered ultimate vendors of kerosene (blocked pump).

[The text of this proposed section is the same as the text of § 48.6427–11T published elsewhere in this issue of the **Federal Register**.]

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–17389 Filed 6–26–98; 2:02 pm]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN84–1b; FRL–6114–9]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 9, 1997, the State of Indiana submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency for rule changes specific to the power plant at the University of Notre Dame located in Saint Joseph County, Indiana. The submittal provides for revised limits on particulate matter (PM) emissions from 5 boilers. The revised limits are less stringent, overall, than the limits in the current SIP. Air quality modeling has been conducted which shows that the National Ambient Air Quality Standards (NAAQS) will still be protected under the new regulations. The EPA is proposing to approve this request. In the final rules section of this **Federal Register**, the EPA is approving the State's requests as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comments on this proposed rule. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before July 31, 1998.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 11, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 98–17379 Filed 6–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX98–1–7386; FRL–6117–4]

Approval and Promulgation of Air Quality State Implementation Plans, Texas; Recodification of, and Revisions to the State Implementation Plan; Chapter 114

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes approval in this action the recodification of and revision to the Texas State Implementation Plan (SIP) for 30 TAC Chapter 114, ''Control of Air Pollution from Motor Vehicles.'' This revision was submitted by the Governor on November 20, 1997, to reformat and renumber existing state Chapter 114 sections into seven new subchapters (A through G) without substantial technical changes.

In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment 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. 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.

Please see the direct final rule of this action located elsewhere in today's **Federal Register** for a detailed description of the recodification and revision to 30 TAC Chapter 114.

DATES: Comments on this proposed rule must be postmarked by July 31, 1998.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents about this action are available for public inspection during normal business hours at the above and following location. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, 2100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7354 or via e-mail at scoggins.paul@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region 6 address.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by

reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 9, 1998.

Jerry Clifford,

Regional Administrator, Region 6.

[FR Doc. 98–17382 Filed 6–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL163–1b; FRL–6119–1]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve the October 10, 1997, Illinois Environmental Protection Agency (IEPA) request that USEPA change the regulatory status for Riverside Laboratories, Inc.''s (Riverside) Kane County facility, based on Riverside's current compliance with the applicable State Implementation Plan (SIP) rule. In the final rules section of this **Federal Register**, the USEPA is approving the State's request as a direct final rule without prior proposal because USEPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless US EPA receives relevant adverse written comments or a request for a public hearing on this proposed rule. Should USEPA receive such comment, it will publish a final rule informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments or request for a public hearing are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments or a request for a public hearing on this proposed rule must be received on or before July 31, 1998.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated:June 25, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–17518 Filed 6–30–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503, 510, 514, 540, 572, 585, 587 and 588

[Docket No. 98–09]

Update of Existing and Addition of New Filing and Service Fees

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission (''Commission'') proposes to revise its existing fees filing petitions, complaints, and special docket application; various public information services, such as record searches, document coping and admissions to practice; filing freight forwarder applications; various ATFI related services; passenger vessel performance and casualty certificate applications; and agreements. This proposal will update existing fees to reflect current costs to the Commission. In addition, the Commission proposes to add three new fees for: the publication of the Regulated Persons Index (''RPI'') on diskette, the application to amend a passenger vessel operators' Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation and Cetification of Financial Responsibility to Meet LIability Incurred for Death or Injury to Passengers or Other Persons on Voyages (''Certificates'') for the addition or substitution of a vessel to the applicant's fleet, and the agency's review of corrections of clerical errors in service contracts, as requested by parties to a service contract.

DATES: Comments due July 31, 1998.

ADDRESSES: Comments (Original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001.

FOR FURTHER INFORMATION CONTACT: Sandra L. Kusumoto, Director, Bureau of Administration, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, (202) 523–5866, E-mail: sandrak@fmc.gov.

SUPPLEMENTARY INFORMATION: The Commission is authorized under the Independent Offices Appropriation Act (''IOAA''), 31 U.S.C. § 9701 (1983), to establish fees for services and benefits that it provides to specific recipients. The IOAA provides that each service or thing of value provided by an agency to a person by self-sustaining to the extent possible, and that each charge shall be fair and based on the costs to the Government, the value of the service or thing to the recipient, policy or interest served, and other relevant facts. 31 U.S.C. § 9701.

The primary guidance for implementation of IOAA is Office of Management and Budget (''OMB'') Circular A–25, as revised July 8, 1993. OMB Circular A–25 requires that a reasonable charge be made to each recipient for a measurable unit or amount of Government Service from which the recipient derives a benefit, in order that the Government recover the full cost of rendering that service.

OMB Circular A–25 further provides that costs be determined or estimated from the best available records in the agency, and that cost computations shall cover the direct and indirect costs to the Government of carrying out the activity, including but not limited to: (a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. (b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel and rent. (c) The management and supervisory costs. (d) The costs of enforcement, collection, research, establishment of standards, and regulations, including any required environmental impact statements.

OMB Circular A–25, paragraphs 6d (a), (b), (c), and (d).

OMB Circular A–25 also calls for a periodic reassement of costs, with

related adjustments of fees, if necessary, and the establishment of new fees where none exist.

The Commission's current filing and service fees have been in effect since 1995. The fees established at that time are no longer representative of the Commission's actual costs for providing such services. The proposed fees include, among other costs, salary increases for several years. The Commission, accordingly, proposes to update its fees to reflect current costs to the Commission.

The Commission proposes the elimination of several fees. The Commission proposes the deletion of fees associated with the provision of subscription services. These services will be discontinued because of diminished public demand for them and because most of the information can be found on the Internet, the Commission's website or requested from the Office of the Secretary on an ad hoc basis. Some fees associated with ATFI Subscriber Tapes have been eliminated in accordance with Docket No. 95–13, *Automated Tariff Filing and Information System*. (60 FR 56122, November 7, 1995).

The Commission also proposes three new user fees for: the provision of the RPI on diskette, the issuance of Pub. L. 89–777 Certificates to add or substitute a vessel to the applicant's fleet, and the agency's review of corrections of clerical errors in service contracts, as requested by parties to a service contract under 46 CFR § 514.7(k)(2). Provisions of Parts 585, 587, and 588 are proposed to be amended to clarify that fees governing the filing of petitions are applicable.

The Commission has reviewed its current fees and developed data on the time and cost involved in providing particular services to arrive at the updated direct labor costs for those services. The direct labor costs include clerical, professional, supervisory, and executive time expended on an activity, plus a check processing cost of $1.40. The indirect costs include Government overhead costs, which are fringe benefits and other wage-related Government contributions in OMB Circular A–76 [1] Commission general and administrative expenses [2] and office general and administrative overhead expenses.[3] The sum of these indirect cost components gives an indirect cost factor that is added to the direct labor costs of an activity to arrive at the fully distributed cost.

All current fees, except as noted, are being revised to reflect the higher costs to the Commission in providing its services. A detailed summary of the data used to arrive at the proposed fees is available from the Secretary of the Commission upon written request.

The Commission intends to update its fees biennially in keeping with OMB guidance. In updating its fees, the Commission will incorporate changes in the salaries of its employees into direct labor costs associated with its services, and recalculate its indirect costs (overhead) based on current level of costs.

The Commission has user fees currently in effect and the proposed fee increases primarily reflect the increases in salary and indirect (overhead) costs. For some services, the increase in processing or review time accounts for the increase in the level of proposed fees.

The Chairman of the Commission hereby certifies that these proposed fees will not have a significant economic impact on a substantial number of small entities. The Commission recognizes that these proposed revisions may have some impact on the shipping industry. Fees collected from the general public for Commission information recover the cost to the Commission for providing specific services. Fees for filing petitions, formal and informal complaints, and special dockets, in the Commission's view, do not impose an undue burden nor have a chilling effect on filers. Furthermore, Commission regulations provide for waiver of fees for those entities that can make the required showing of undue hardship. 46 C.F.R. § 503.41.

This proposed rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal Access to Justice, Investigations, Lawyers, and Reporting and record keeping requirements.

46 CFR Part 503

Classified information, Freedom of Information, Privacy, and Sunshine Act.

46 CFR Part 510

Freight forwarders, Maritime carriers, Reporting and record keeping requirements, and Surety bonds.

46 CFR Part 514

Freight, Harbors, Maritime carriers, and Reporting and record keeping requirements.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and record keeping requirements, and Surety bonds.

46 CFR Part 572

Administrative practice and procedure, Freight, Maritime carriers, and Reporting and record keeping requirements.

46 CFR Part 585

Administrative practice and procedure, Maritime carriers.

46 CFR Part 587

Administrative practice and procedure, Maritime carriers.

46 CFR Part 588

Administrative practice and procedure, Investigations, Maritime carriers.

Pursuant to 5 U.S.C. 553, the Independent Offices Appropriations Act, 31 U.S.C. § 9701, and section 17 of the Shipping Act of 1984, 46 U.S.C. app. § 1716, the Commission proposes to amend title 46 of the Code of Federal Regulations as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817, 820, 826, 841a 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; and Pub. L. 88–777 (46 U.S.C. app. 817d, 817e).

2. The fourth sentence of § 502.51 is revised to read as follows:

Subpart D—Rulemaking

§ 502.51 Petition for issuance, amendment, or repeal of rule.

* * * Petitions shall be accompanied by remittance of a $177 filing fee.

[1] These include leave and holidays, retirement, worker's compensation, awards, health and life insurance, and Medicare. These are expressed as a percentage of basic pay.

[2] These costs include all salaries and overhead, such as rent, utilities, supplies and equipment, allocated to the Offices of the Commissioner, Managing Director, General Counsel, and the Bureau of Administration. The percentage of these costs to the total agency budget is allocated across all Commission programs.

[3] These expenses are limited to the overhead expenses allocated to those bureau and offices involved in fee-generating activities, and is derived from dividing allocated overhead expenses by the total funding for these fee-generated offices.

Subpart E—Proceedings; Pleadings; Motions; Replies

3. Section 502.62(f) is revised to read as follows:

§502.62 Complaints and fee.

* * * * *

(f) The complaint shall be accompanied by remittance of a $184 filing fee.

* * * * *

4. Section 502.68(a)(3) is revised to read as follows:

§ 502.68 Declaratory orders and fee.

(a) * * *

(3) Petitions shall be accompanied by remittance of a $177 filing fee.

* * * * *

5. Section 502.69(b) is revised to read as follows:

§ 502.69 Petitions-general and fee.

* * * * *

(b) Petitions shall be accompanied by remittance of a $177 filing fee. [Rule 69.]

Subpart K—Shortened Procedure

6. The last sentence of § 502.182 is revised to read as follows:

§ 502.182 Complaint and memorandum of facts and arguments and filing fee.

* * * The complaint shall be accompanied by remittance of a $184 filing fee.

[Rule 182.]

Subpart U—Conciliation Service

7. The last sentence of § 502.404(a) is revised to read as follows:

§ 502.404 Procedure and fee.

(a) * * * The request shall be accompanied by remittance of a $69 service fee.

* * * * *

PART 503—PUBLIC INFORMATION

8. The authority citation for Part 503 is revised to read as follows:

Authority: 5 U.S. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12958 of April 20, 1995 (60 FR 19825), sections 5.2(a) and (b).

§ 503.41 [Amended]

9. In § 503.41, Policy and services available, paragraph (b)(1) is removed, and paragraphs (b)(2) and (b)(3) are redesignated as (b)(1) and (b)(2).

10. In § 503.43, the first two sentences of paragraph (a)(8), paragraphs (c)(1) (i) and (ii), the first sentence of paragraph (c)(2), paragraph (c)(3)(ii) and (iii), paragraph (c)(4), paragraph (e) and paragraph (g) are revised; paragraphs (d), (f) and (h) are removed; revised paragraphs (e) and (g) are redesignated paragraphs (d) and (e); and paragraph (c)(3)(iv) is added to read as follows:

§ 503.43 Fees for services.

(a) * * *

(8) *Direct costs* means those expenditures which the agency actually incurs in searching for and duplicating (and in the case of commercial requester, reviewing) documents to respond to a Freedom of Information Act request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 17.5 percent of that rate to cover benefits and the cost of operating duplicating machinery.* * *

* * * * *

(c) * * *

(1) * * *

(i) Search will be performed by clerical/adminstrative personnel at a rate of $18.00 per hour and by professional/executive personnel at a rate of $35.00 per hour.

(ii) Minimum charge for record search is $18.00.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.35 shall be assessed to recover full costs at the rate of $70.00 per hour.* * *

(3) * * *

(ii) By Commission personnel, at the rate of five cents per page (one side) plus $18.00 per hour.

(iii) Minimum charge for copying is $4.50.

(iv) No charge will be made by the Commission for notices, decisions, orders. etc., required by law to be served on a party to any proceeding or matter before the Commission. No charge will be made for single copies of such Commission issuances individually requested in person or by mail.

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $55.00 for each certification.

(d) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuance pertaining to the docket: $8 per proceeding.

(e) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $86 pursuant to § 502.27 of the chapter.

Subpart G—Access to Any Record of Identifiable Personal Information

11. In § 503.63, the introductory texts of paragraphs (b) and (c) are revised to read as follows:

§ 503.63 Request for information.

* * * * *

(b) Any individual requesting such information in person shall personally appear at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall:

* * * * *

(c) Any individual requesting such information by mail shall address such request to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall include in such request the following:

* * * * *

12. In § 503.65, the introductory text of paragraph (b)(1) and paragraph (b)(2) are revised to read as follows:

§ 503.65 Request for access to records.

* * * * *

* * *

(1) Any individual making such request in person shall do so at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall:

* * * * *

(2) Any individual making a request for access to records by mail shall address such request to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall include therein a signed notarized statement to verify his or her identity.

* * * * *

13. In § 503.67, paragraph (b)(1) is revised to read as follows:

§ 503.67 Appeals from denial of request for amendment of a record.

* * * * *

(b) * * *

(1) Be addressed to the Chairman, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573; and

* * * * *

14. In § 503.69, paragraph (b)(2) is revised to read as follows:

§ 503.69 Fees.

* * * * *

(b) * * *

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $55 for each certification.

* * * * *

PART 510—LICENSING OF OCEAN FREIGHT FORWARDERS

15. The authority citation for Part 510 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; 21 U.S.C. 862.

Subpart B—Eligibility and Procedure for Licensing; Bond Requirements

16. Section 510.12(b) is revised to read as follows:

§ 510.12 Application for license.

(a) * * *

(b) *Fee.* The application shall be accompanied by a money order, certified check or cashier's check in the amount of $778 made payable to the *Federal Maritime Commission.*

* * * * *

17. The penultimate sentence in § 510.14(b) is revised to read as follows:

§ 510.14 Surety bond requirements.

* * * * *

(b) * * *

The fee for such supplementary investigation shall be $224 payable by money order, certified check or cashier's check to the *Federal Maritime Commission.* * * *

* * * * *

18. The first sentence of § 510.19(e) is revised to read as follows:

§ 510.19 Changes in organization.

* * * * *

(e) *Application form and fee.* Applications for Commission approval of status changes or for license transfer under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, on form FMC–18 Rev., together with a processing fee of $362, made payable by money order, certified check or cashier's check to the *Federal Maritime Commission.* * * *

* * * * *

19. Section 510.26 is added to read as follows:

§ 510.26 Regulated Persons Index.

The Regulated Persons Index is a database containing the names, addresses, phone/fax numbers and bonding information, where applicable, of Commission-regulated entities. The database may be purchased for $84 by contacting BTCL, Federal Maritime Commission, Washington, DC 20573. Contact information is listed on the Commission's website at www.fmc.gov.

PART 514—TARIFFS AND SERVICE CONTRACTS

20. The authority citation for Part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 803, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

Subpart B—Service Contracts

21. Section 514.7(K)(2) introductory text is revised to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(k) * * *

(2) *Corrections.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission, accompanied by remittance of a $233 service fee, and shall include:

* * * * *

Subpart C—Form, Content, and Use of Tariff Data

22. In § 514.21, paragraphs (b)(1), (b)(2)(i) through (iv), (c), (e)(1), (f), (g), (i), (j) (l) and (k) are revised; paragraphs (l) is removed; paragraphs (m) is revised and redesignated paragraphs (l); and new paragraphs (m) is added to read as follows:

§ 514.21 User charges.

* * * * *

(b) *User manual* (of ATFI ''Guides''—§ 514.8(b)).

(1) *In diskette form:* $39 for diskette(s) containing all user guides in WordPerfect 5.0 format.

(2) * * *

(i) *Package A:* Fundamentals Guide and System Handbook (125 pages) are made available jointly and are a prerequisite for use of either of the packages in paragraphs (b)(2)(ii) or (b)(2)(iii): $49.00.

(ii) *Package B:* Tariff Retrieval Guide: $49.00.

(iii) *Package C:* Tariff Filing Guide: $59.00.

(iv) *Package D:* All Guides listed in paragraph (b)(2)(i) through (b)(2)(iii): $99.00.

* * * * *

(c) *Registration for user (filer and/or retriever ID and password* (see exhibit 1 to this part and §§ 514.4(d), 514.8(f) and 514.20)): $174 for initial registration for firm and one individual; $148 for additions and changes.

* * * * *

(e) *Certification of batch filing capability (by appointment through the Office of Information Resources Management)* (§ 514.8(1)).

(1) *User charge:* $496 per certification submission (covers all types of tariffs for which the applicant desires to be certified as well as recertification required by substantial charges to the ATFI system).

* * * * *

(f) *Application for special permission* (§ 514.18): $179.

(g) *Remote electronic retrieval* (§ 514.20(c)(3)). The fee for remote electronic access to ATFI electronic data is 33 cents for each minute of remote computer access directly to the ATFI database by any individual.

(h) * * *

(i) *Tariff filing fee.* The fee for tariff filing shall be 20 cents per filing object; the fee for filing service contract essential terms shall be $1.63 per filing set.

(j) *Daily Subscriber Data* (§ 514.20(d)).

(1) Persons requesting download of daily updates must pay 33 cents per minute as provided by § 514.21(g).

(2) * * *

(k) *Miscellaneous tapes.* The fee for tape data, other than the ATFI database described in paragraph (j) of this section, shall be $46 for the initial tape plus $25 for each additional tape required.

(l) *Access to ATFI data.* Official ATFI tariff data may be directly accessed by computer by:

(1) *Retrievers.* Any person may, with a proper retrieval USERID and password, enter the official ATFI database to obtain computer access of tariff matter, as provided in this part, but may download ATFI data only through the ''Print Screen'' function, which prints one screen at a time on paper. The user fee for this computer access is 33 cents a minute, for which the user will be billed at the end of each month.

(2) *Filers.* Any person with a proper filer USERID and password may enter the official ATFI database to obtain computer access of tariff matter as provided in this part, but may download ATFI data only through the ''Print Screen'' function, which prints one screen at a time on paper, and the filer ATFI-mail-file-transfer function, which prints the contents of the filer's ATFI mail on paper.

(m) *Regulated Persons Index.* The Regulated Persons Index is a database containing the names, addresses, phone/

fax numbers and bonding information, where applicable, of Commission-regulated entities. The database may be purchased for $84 by contacting BTCL, Federal maritime Commission, Washington, DC 20573. Contact information is listed on the Commission's website at www.fmc.gov.

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

23. The authority citation for Part 540 continues to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356/1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. 1716).

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

24. The last sentence in § 540.4(a) and the last sentence in § 540.4(b) are revised, and another sentence added to § 540.4(b) to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

(a) * * * Copies of Form FMC–131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) * * * An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $2,152. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $1,076.

* * * * *

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

25. The last sentence in § 540.23(a) and the last sentence in § 540.23(b) are revised, and another sentence added to § 540.23(b) to read as follows:

§ 540.23 Procedure for establishing financial responsibility.

(a) * * * Copies of Form FMC–131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) * * * An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $938. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $469.

* * * * *

PART 572—AGREEMENS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

26. The authority citation for Part 572 continues to read as follows:

Authority: 5. U.S.C. 553; 31 U.S.C. 9701: 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

Subpart D—Filing of Agreements

27. Section 572.401(f) is revised to read as follows:

§ 572.401 General requirements.

* * * * *

(f) Agreement filings for Commission action requiring an Information Form and review by the Commission shall be accompanied by remittance of a $1,666 filing fee; agreement filings for Commission action not requiring an Information Form, but requiring review by the Commission, shall be accompanied by remittance of a $841 filing fee; agreement filings reviewed under delegated authority shall be accompanied by remittance of a $391 filing fee; and agreement filings for terminal and carrier exempt agreements shall be accompanied by remittance of a $131 filing fee.

PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

28. The authority citation for Part 585 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 19(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12); Reorganization Plan No. 7 of 1961, 75 Stat 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

Subpart C—Conditions Unfavorable to Shipping

29. Section 585.402 is revised to read as follows:

§ 585.402 Filing of petitions.

All requests for relief for conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a $177 filing fee.

PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

30. The authority citation for Part 587 continues to read as follows:

Authority: 5 U.S.C. 553; secs. 13(b)(5) 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5), 1714 and 1716; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

31. Section 587.3(a)(2) is revised to read as follows:

§ 587.3 Petitions for relief.

(a) * * *

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a $177 filing fee.

* * * * *

PART 588—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S. FLAG-CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

32. The authority citation for Part 588 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

33. Section 588.4(a) is revised to read as follows:

§ 588.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 588.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Marine Commission, Washington, DC 20573. The petition

shall be accompanied by remittance of a $177 filing fee.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–17451 Filed 6–30–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[CI Docket No. 98–69; FCC 98–97]

Importation of Radio Frequency Devices Capable of Causing Harmful Interference

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has issued an *Order and Notice of Proposed Rule Making.* The Notice of Proposed Rulemaking (NPRM) proposes that entities submit FCC Form 740 directly to the U.S. Customs Service (Customs) rather than be required to file duplicate declarations with the FCC and Customs and to modify the marketing rules affecting devices imported solely for export. Under the first proposal, only the few remaining entities that do not file the Form 740 electronically with Customs will be affected. These entities will be required to file Form 740 with Customs only. Eliminating the requirement to file duplicative information with the FCC reduces the administrative burden on filers, particularly small businesses, and eliminates an FCC record process that is no longer necessary. The modification under the second proposal will improve our ability to enforce the equipment authorization rules by eliminating a loophole that has resulted in the marketing and selling of devices that could not be authorized in the U.S.

DATES: Comments are due July 31, 1998, reply comments are due August 17, 1998.

FOR FURTHER INFORMATION CONTACT: Dan Emrick of the Compliance and Information Bureau at (202) 418–1175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* CI Docket No. 98–69, FCC 98–97, adopted May 18, 1998, and released June 5, 1998. The full text of this *Order and Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW, Washington, DC 20037, telephone (202) 857–3800 (phone), (202) 857–3805 (facsimile), 1231 20th St., N.W., Washington, D.C. 20036.

Summary of Proposed Rule Making

1. In this *Notice of Proposed Rulemaking,* we seek comment on two proposals involving the importation of radio frequency devices. First, we propose that entities submit FCC Form 740 directly to the U.S. Customs Service (Customs) rather than be required to file duplicate declarations with the FCC and Customs. Under this proposal, only the few remaining entities that do not file the Form 740 electronically with Customs will be affected. These entities will be required to file Form 740 with Customs only. Any compliance information needed by the FCC is infrequently needed on a case by case basis and would be readily available from Customs. Eliminating the requirement to file duplicative information with the FCC reduces the administrative burden on filers, particularly small businesses, and eliminates an FCC record process that is no longer necessary.

2. Next, we seek comment on our proposal to modify the marketing rules affecting devices imported solely for export. This modification will improve our ability to enforce the equipment authorization rules by eliminating a loophole that has resulted in the marketing and selling of devices that could not be authorized in the U.S.

Initial Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected economic impact on small entities by the policies and rules proposed in this Order and Notice of Proposed Rule Making (Notice). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the Notice. The Office of Public Affairs, Reference Operations Division will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2]

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et seq., has been amended by the Contract with America Advancement Act of 1996 Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA).

[2] See 5 U.S.C. 604.

I. Need For and Purpose of This Action

4. This Notice reexamines the rules specifying procedures for importation of radio frequency devices. It seeks information that will assist the Commission in determining whether current rules can be simplified and made more easy to enforce. It will also reduce the administrative burden on both the Commission and the public.

II. Description and Estimate of Number of Small Businesses to Which Rules Will Apply

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organizations,'' and ''small governmental jurisdiction''.[4] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6] The Commission will need to receive more data regarding the brokers who currently file Forms 740 with the Commission, rather than filing them electronically through the U.S. Customs Service (Customs). We estimate that 800 of these forms are filed per month, presumably by smaller firms that do not subscribe to the Customs electronic filing system due to the relatively small number of FCC declarations that they handle. While there is no readily apparent link between the number of paper filings per month and the number of entities submitting the declarations, we presume most of the entities involved are small businesses or individuals. These entities will continue to be subject to the requirement to submit FCC Form 740 documents, but only to one government agency, not two. They will address and mail only one

[3] 5 U.S.C. 603(b)(3).

[4] *Id.;* 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. 5 U.S.C. 601(3).

[6] Small Business Act, 15 U.S.C. 632 (1996).

form per declaration, not two, thereby reducing at least their mailing cost by half. Other administrative costs, such as staff time required to complete the form, will also be significantly reduced.

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

6. There will be no new requirements. The Notice proposes to eliminate the requirement to file a copy of Form 740 with the Commission for entities that do not use the Customs electronic filing procedures. Those entities will provide an original Form 740 to Customs with the shipment, but will not be required to file a second copy with the FCC.

V. Significant Alternatives and Steps Taken by Agency To Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives

7. The impact of this Notice will be, by its nature, a reduction of the burden on small entities. For example, eliminating the duplicative filing of the Form 740 should reduce administrative overhead, such as processing and mailing costs for small businesses.

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

Report to Congress

The Commission will send a copy of this Order and Notice of Proposed Rulemaking, including this Final Regulatory Flexibility Analysis, to Congress pursuant to the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 801(a)(1)(A). A summary of the Order and Notice of Proposed Rulemaking and this FRFA will also be published in the **Federal Register** pursuant to 5 U.S.C. 604(b), and it will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 2

Imports.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–17491 Filed 6–30–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 63, No. 126
Wednesday, July 1, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF INTERIOR

Bureau of Land Management

Whitetail-Pipestone Recreation Management Strategy; Site-specific Deerlodge Forest Plan Amendment; Butte and Jefferson Ranger Districts; Silver Bow and Jefferson Counties, Montana

AGENCY: Forest Service, USDA and Bureau of Land Management, USDI.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service and BLM will prepare an environmental impact statement (EIS) to create a recreation management strategy for the Whitetail-Pipestone area and amend site-specifically the Deerlodge Forest Plan and the Headwaters Resource Management Plan to include further recreation direction. The Forest Service and the BLM will be joint lead agencies for this EIS (40 CFR 1501.5). The purpose is to determine what network of roads and trails will best provide a variety of recreation opportunities while protecting resources from soil erosion, spread of noxious weeds, and disturbance of wildlife habitats and heritage resources.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than July 19, 1998.

ADDRESSES: Send written comments to Deborah L.R. Austin, Forest Supervisor, Beaverhead-Deerlodge National Forest, 1820 Meadowlark, Butte, MT, 59701.

FOR FURTHER INFORMATION CONTACT: Jocelyn Dodge, Environmental Analysis Team Leader, Butte Ranger District, 1820 Meadowlark, Butte, MT, 59701, or phone: (406)494–2147, Eric Tolf, Jefferson Ranger District, 3 Whitetail Road, Whitehall MT, 59759, or phone (406)287–3223 or Darrell McDaniel, BLM, 106 North Parkmont, Butte, MT, 59701, or phone (406)–494–5059.

SUPPLEMENTARY INFORMATION: The Forest Service and BLM propose to create a recreation management strategy for federal lands in the Whitetail-Pipestone Area. Five sub-units would be managed with an area restriction with non-motorized and/or motorized travel allowed on various designated roads and trails. Different sub-units would emphasize different recreation opportunities. The proposed strategy also includes construction of trailhead and camping facilities and an interpretive site, and allows for future trail construction to meet resource and recreation objectives. This proposal would result in non-significant amendments to the Deerlodge Forest Plan and the Headwaters Resource Management Plan.

The analysis area lies between Butte, Boulder, and Whitehall, Montana. It includes all National Forest and Bureau of Land Management lands within an area defined by Interstate 15 from Butte to Boulder, Whitetail Road from Boulder to Whitehall (including Hadley Park), and Montana Highway 2 from Whitehall to Butte. The project area totals 276,234 acres including private lands.

The Forest Service and BLM land management plans include goals to provide areas for quality motorized and non-motorized recreation and to provide a wide variety of suitable recreation experiences. Since these plans were adopted about ten years ago, monitoring shows large increases in use and changes in type of recreation activities. A recreation management strategy for the area must address changes in recreation activities in the last 10 years, address current and anticipated travel demands on public land, and manage recreation use while protecting resources, including historic and prehistoric sites.

Potential issues identified are the effects of the proposal on watershed function, recreation, road and trail safety, fish and wildlife, heritage resources, and roadless character.

Public participation is important to the analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentative issues identified above. People may visit with Forest Service and BLM officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS comment period.

During the scoping process, the Forest Service and BLM are seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The United States Fish and Wildlife Service will be consulted concerning effects to threatened and endangered species. The agencies invite written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

Analysis of this proposed action began in an environmental assessment (EA). Public involvement for the EA started in July, 1995. Since then, the public has participated in formulating issues and developing alternatives through responding to large mailings and attending periodic public meetings and field trips.

In addition to the proposed action, a range of alternatives has been developed in response to issues identified during scoping. One of these is the ''no action'' alternative, in which no changes would be made to current travel management direction for the analysis area. A second alternative identified proposes to reduce secondary road densities from the present condition by 50 to 90 percent, while maintaining general forest access for traditional non-motorized recreation. Class I primary motorized road access would remain the same as the existing condition. A third alternative proposes to increase the number of trails, trailheads, campgrounds, view points, and tables, and identify historic points more than identified in the proposed action. The Forest Service and BLM will analyze and document the direct, indirect, and cumulative effects of all alternatives.

The Forest Service and BLM will continue to involve the public and will inform interested and affected parties as to how they may participate and contribute to the final decision. Another formal opportunity for response will be provided following completion of a draft EIS.

The draft EIS should be available for review in October, 1998. The final EIS

is scheduled for completion in March, 1999.

The comment period on the draft EIS will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service and BLM believe it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 90-day comment period so substantive comments and objections are made available to the forest Service and BLM at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

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

The Beaverhead-Deerlodge Forest Supervisor and the Headwaters Resource Area Manager are the responsible officials who will make the decision. They will decide on this proposal after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: June 4, 1998.

Thomas W. Heintz,

Acting Forest Supervisor, Beaverhead-Deerlodge National Forest.

Dated: June 5, 1998.

Merle Good,

Area Manager, Headwaters Resource Area.

[FR Doc. 98–17467 Filed 6–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revised East Beaver and Miner's Creek Timber Sale and Prescribed Burning Project, Targhee National Forest, Clark County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare environmental impact statement.

SUMMARY: This is a revised Notice of Intent for the East Beaver Creek Timber Sale and Prescribed Burning Project. A Notice of Intent was originally published on April 20, 1998 pages 19470 and 19471 of the **Federal Register.** The project is being revised to add the Miner's Creek Timber Sale as part of the environmental impact statement. The project will now be referred to as the East Beaver and Miner's Creek Timber Sale and Prescribed Burning Project. The Forest Supervisor of the Targhee National Forest gives notice of the agency's intent to prepare an environmental impact statement. The revised proposed action would harvest 7.4 million feet of timber from 2,145 acres and prescribe burn 2,220 acres with 518 acres of the burning in the timber sale harvest units. The remaining 1,702 acres of burning would be in nonforest types. Two miles of temporary roads would be built, 2.6 miles of existing roads reconstructed, and 4.4 miles of new specified roads would be constructed. Project area is located approximately 15 miles northeast of Dubois, Idaho. Alternatives will include the proposed action, no action, and any alternatives that respond to significant issues generated during the scoping process. A more detailed description is available from the Dubois Ranger District; see address below.

DATES: Send written comments and suggestions on the issues concerning the proposed action by July 20, 1998. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on the proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have a standing to appeal the subsequent decision under 39 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 15 days.

ADDRESSES: Send written comments to Clarence M. Murdock, District Ranger, Dubois Ranger District, P.O. Box 46, Dubois, ID 83423.

FOR FURTHER INFORMATION CONTACT: John Councilman, Interdisciplinary Team Leader, phone (208) 558–7301.

SUPPLEMENTARY INFORMATION: The revision to this project is being made to include the Miner's Creek Timber Sale. An environmental assessment was prepared for Miner's Creek in 1995 and the sale was sold in 1996. After sale, a lawsuit was filed by two environmental groups. The Forest Service's decision to log the sale was upheld at the local Federal court level but this decision was appealed to the 9th Circuit Court of Appeals. The 9th Circuit Court reversed the lower court's decision and directed the Forest Service to prepare an environmental impact statement. The Miner's Creek Timber Sale and the East Beaver Creek Timber Sale and Prescribed Burning Project are within the same watersheds, have similar issues and could be implemented at the same time. Therefore, it made sense to combine the projects into a single analysis.

The Targhee Revised Land Management Plan was approved in 1997. One of the decisions in the Revised Plan was to allow for the production and utilization of wood fiber from certain areas of the Forest. The geographic area where the proposed action would take place has primarily a prescription of timber management with emphasis on big game security (5.1.4b).

Prescriptions for other lands in the area are described below.

Aquatic Influence Zones (2.8.3)—Management emphasis is directed at the application of ecological knowledge to restore and maintain the health of these areas in ways that also produce desired resource values, products, protection, restoration, enhancement, interpretation, and appreciation of these areas.

Visual Quality Maintenance (2.1.2)—This prescription emphasizes maintaining the existing visual quality within major travel corridors with quality natural vistas, while allowing livestock production, and other compatible commodity outputs. There is no scheduled timber harvesting. No scheduled harvests means timber removed from these areas does not contribute toward the Forests annual allowable sale quantity.

Initial public involvement will include mailing maps and a project description to interested parties to solicit comments on the proposal. Preliminary issues include: water quality, fisheries, elk habitat, and motorized access by the public.

Additional opportunity to comment on the project will occur on the Draft Environmental Impact Statement (draft EIS). The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in October of 1998.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** At the same time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comment. It is very important that those interested in the proposed action participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* (9th Circuit, 1986 and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. Comments may also address the adequacy of the draft environmental impact statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be completed in January of 1998. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decisions on this proposal.

Responsible Official

Jerry B. Reese, Forest Supervisor, is the responsible official. As responsible official, he will document the selected alternative for the East Beaver and Miner's Creek Timber Sale and Prescribed Burning Project EIS and his rationale in a Record of Decision.

The decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: June 9, 1998.

Richard N. Rine,

Acting Forest Supervisor.

[FR Doc. 98–17464 Filed 6–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Committee of Scientists will hold three public teleconference calls: the first on Wednesday, July 8, 1998; the second on Friday, July 10, 1998; and the third on Wednesday, July 15, 1998. Each teleconference call will begin at 11:00 a.m. and end at 2:00 p.m. (eastern daylight time). The purpose of the telephone conference calls is for the Committee of Scientists to continue to discuss its report and recommendations to the Secretary of Agriculture and the Chief of the Forest Service. The public is invited to attend these teleconference calls and may be provided an opportunity to comment on the Committee of Scientists' deliberations during the teleconference, only at the request of the Committee.

DATES: The teleconference calls will be held on Wednesday, July 8, 1998; Friday, July 10, 1998; and Wednesday, July 15, 1998; each from 11:00 a.m. to 2:00 p.m. (eastern daylight time).

ADDRESSES: The first teleconference, on July 8, will be held at the USDA Forest Service headquarters, Auditor's Building, 201 14th Street, SW. Washington, DC in the Roosevelt Conference Room and at all Regional Offices of the Forest Service, which are listed in the table under Supplementary Information.

The second and third teleconferences will be held at the USDA Forest Service headquarters, Auditor's Building, 201 14th Street, SW, Washington, DC in the Chief's Conference Room and at all Regional Offices of the Forest Service.

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339. Also, the Committee may be accessed via the Internet at www.cof.orst.edu./org/scicomm/.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the teleconferences, contact Bob Cunningham, Designated Federal Official to the Committee of Scientists, at telephone: (703) 306–1023 or via the Internet at rcunningansf.gov/.

SUPPLEMENTARY INFORMATION: The public may attend the teleconference at the following field locations:

USDA Forest Service Regional Office Locations

Region 1: Northern Region	Federal Building	200 E. Broadway	Missoula, MT.
Region 2: Rocky Mountain Region	740 Simms St		Golden, CO.

USDA FOREST SERVICE REGIONAL OFFICE LOCATIONS—Continued

Region 3: Southwestern Region	Federal Building	517 Gold Ave., SW	Albuquerque, NM.
Region 4: Intermountain Region	Federal Building	324 25th St	Ogden, UT.
Region 5: Southwest Region	630 Sansome ST		San Francisco, CA.
Region 5: Pacific Northwest Region	333 SW 1st Ave		Portland, OR.
Region 8: Southern Region	1720 Peachtree Rd. NW		Atlanta, GA.
Region 9: Eastern Region	310 W. Wisconsin Ave., Room 500		Milwaukee, WI.
Region 10: Alaska Region (office will open early).	Federal Office Building	709 W. 9th St	Juneau, AK.

The Committee of Scientists is chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997 (62 FR 65795).

Dated: June 25, 1998.

Robert C. Joslin,

Deputy Chief, National Forest System.

[FR Doc. 98–17479 Filed 6–30–98; 8:45 am]

BILLING CODE 3410–11–M

CENSUS MONITORING BOARD

Notice of Public Meeting

SUMMARY: This notice, in compliance with Pub. L. 105–119, sets forth the meeting date, time and place for the second business meeting of the full Census Monitoring Board. The meeting agenda will include an examination of ongoing preparations by the Census Bureau for the 2000 Decennial Census.

DATES: The meeting will take place at 10 a.m. Wednesday, July 8, 1998.

ADDRESSES: The meeting will be held in Conference Rooms 3 and 4 of the Census Bureau's Conference Center, located in Building 3 at the Suitland Federal Center, 4700 Silver Hill Road, Suitland, MD.

FOR FURTHER INFORMATION CONTACT: Contact LaVerne Vines Collins, Chief, Public Information Office, Census Bureau. Phone: 301–457–3100.

Fred T. Asbell,

Executive Director, Congressionally Appointed Members.

[FR Doc. 98–17604 Filed 6–30–98; 8:45 am]

BILLING CODE 1179–00–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Tuesday, June 23, 1998, 2:00 p.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS: Special Telephonic Meeting (Open).

Agenda

I. Approval of Agenda
II. Announcements
III. Discussion of the Schools and Religion Hearing

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–17588 Filed 6–26–98; 5:05 pm]

BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, July 10, 1998, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of June 12, 1998 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Delaware, Missouri, Rhode Island, and Vermont
VI. ADA Report
- An Advisory Committee Appointments for Delaware, Missouri, Rhode Island, and Vermont
- An Assessment of the Enforcement of Title II, Subtitle A of the Americans with Disabilities Act: U.S. Department of Justice

VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–17689 Filed 6–29–98; 2:23 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 32–98]

Proposed Foreign-Trade Zone—Lancaster, California, Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Lancaster, California, to establish a general-purpose foreign-trade zone in Lancaster, California, within the Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 12, 1998. The applicant is authorized to make the proposal under Section 6302 of the California Code.

The proposed zone would be the fourth general-purpose zone in the Los Angeles-Long Beach Customs port of entry area. The existing zones are: *FTZ 50* in Long Beach (sites also in Ontario, Santa Ana and San Bernardino) (Grantee: Board of Harbor Commissioners of the City of Long Beach, Board Order 147, 44 FR 55919, 9/28/79); *FTZ 191* in Palmdale (Grantee: City of Palmdale, Board Order 628, 58 FR 6614, 2/1/93); and, *FTZ 202* in Los Angeles (sites also in Bakersfield, Rancho Dominguez and Carson) (Grantee: Board of Harbor Commissioners of the City of Los Angeles, Board Order 693, 59 FR 37464, 7/22/94).

The proposed new zone would consist of 2 sites (3,200 acres) in Lancaster (Los Angeles County): *Site 1* (160 acres)—Lancaster Business Park, Avenues L and K–8, Lancaster; and *Site 2* (3,040 acres)—Reusable Launch

Vehicle/Space Port, southern perimeter of that portion of the Edwards Air Force Base, Los Angeles County. Site 1 is owned by the Lancaster Economic Development Corporation and several private owners. Site 2 is presently owned by the Department of Defense but will be conveyed to the applicant and would be annexed into the City limits and fall under the City's jurisdiction.

The application indicates a need for foreign-trade zone services in the Lancaster area. Several firms have indicated an interest in using zone procedures for research and development and space launch and recover operations. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on August 4, 1998, 9:00 a.m., City of Lancaster City Hall, Emergency Operation Center, 44933 North Fern Avenue, Lancaster, California 93534.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 31, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 14, 1998).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

City Clerk's Office, City of Lancaster, 44933 North Fern Avenue, Lancaster, California 93534

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 18, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–17444 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 989]

Grant of Authority for Subzone Status; Artesyn Technologies (Inc.) (Electric Power Supplies), Broomfield, Colorado

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City and County of Denver, Colorado, grantee of FTZ 123, for authority to establish special-purpose subzone status for the electric power supply manufacturing plant of Artesyn Technologies (Inc.)(formerly, Zytec Corporation), in Broomfield, Colorado, was filed by the Board on August 22, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 69–97, 62 FR 45794, 8–29–97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the Artesyn Technologies (Inc.), plant in Broomfield, Colorado (Subzone 123B), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 22nd day of 1998.

Robert S. LaRussa,

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

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–17447 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 988]

Grant of Authority for Subzone Status; Artesyn Technologies (Inc.) (Electric Power Supplies), Redwood Falls, Minnesota

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Metropolitan Area Foreign Trade Zone Commission, Inc., grantee of FTZ 119, for authority to establish special-purpose subzone status for the electric power supply manufacturing facilities of Artesyn Technologies (Inc.)(formerly, Zytec Corporation), in Redwood Falls, Minnesota, was filed by the Board on August 22, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 68–97, 62 FR 45793, 8–29–97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the Artesyn Technologies (Inc.), facilities in Redwood Falls, Minnesota (Subzone 119F), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 22nd day of June 1998.

Robert S. LaRussa,

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

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–17446 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18–98]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico, Application for Expansion; Extension of Public Comment Period

The comment period for the above case, submitted by the Puerto Rico Industrial Development Company (PRIDCO), requesting authority to expand its zone to include additional areas of the PRIDCO Industrial Park System (63 FR 17982, 4/13/98), is extended to July 13, 1998, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include three (3) copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 11, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–17443 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 987]

Grant of Authority for Subzone Status; Komatsu America International Company, Inc.; (Construction and Mining Equipment Parts Distribution) Ripley, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Memphis, Tennessee, grantee of Foreign-Trade Zone 77, for authority to establish special-purpose subzone status at the warehousing/distribution (non-manufacturing) facility of Komatsu America International Company, Inc., located in Ripley, Tennessee, was filed by the Board on June 30, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 57–97, 62 FR 36487, 07/08/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 77C) at the Komatsu America International Company, Inc., facility in Ripley, Tennessee, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28. The scope of authority does not include activity conducted under FTZ procedures that would result in a change in tariff classification.

Signed at Washington, DC, this 19th day of June 1998.

Richard W. Moreland,

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

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–17450 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 985]

Designation of New Grantee for Foreign-Trade Zone 85, Everett, Washington; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the request with supporting documents (Docket 48–96) from the Puget Sound Foreign-Trade Zones Association, grantee of Foreign-Trade Zone 85, Everett, Washington, for reissuance of the grant of authority for said zone to the Port of Everett, a State of Washington municipal corporation, which has accepted such reissuance subject to approval of the FTZ Board, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes the Port of Everett as the new grantee of Foreign-Trade Zone 85.

The approval is subject to the FTZ Act and the FTZ Board's regulations, including Section 400.28.

Signed at Washington, DC, this 19th day of June 1998.

Richard W. Moreland,

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

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–17448 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 986]

Approval of Export Manufacturing Activity Within Foreign-Trade Zone 216; Olympia, Washington; Darigold, Inc. (Dairy By-Products)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port of Olympia, Washington, grantee of FTZ 216, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of Darigold, Inc., to process liquid whey permeate for export under zone procedures within FTZ 216 (filed 3–19–98, FTZ Docket 13–98);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is for export only (§ 400.32(b)(1)(ii)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28, and further subject to a restriction requiring that all foreign-origin, tariff-rate-quota dairy products admitted to FTZ 216 for the Darigold, Inc., activity shall be reexported, as indicated in the application.

Signed at Washington, DC, this 19th day of June 1998.

Richard W. Moreland,

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

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–17449 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of JULY 1998, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in JULY for the following periods:

	Period
Antidumping Duty Proceedings	
Armenia: Solid Urea, A–831–801	7/1/97–6/30/98
Azerbaijan: Solid Urea, A–832–801	7/1/97–6/30/98
Belarus: Solid Urea, A–822–801	7/1/97–6/30/98
Brazil: Industrial Nitrocellulose, A–351–804	7/1/97–6/30/98
Brazil: Silicon Metal, A–351–806	7/1/97–6/30/98
Estonia: Solid Urea, A–447–801	7/1/97–6/30/98
Georgia: Solid Urea, A–833–801	7/1/97–6/30/98
Germany: Industrial Nitrocellulose, A–428–803	7/1/97–6/30/98
Germany: Solid Urea, A–428–605	7/1/97–6/30/98
Iran: In-Shell Pistachio Nuts, A–507–502	7/1/97–6/30/98
Italy: Pasta, A–475–818	7/1/97–6/30/98
Japan: Cast Iron Pipe Fittings, A–588–605	7/1/97–6/30/98
Japan: Clad Steel Plate, A–588–838	7/1/97–6/30/98
Japan: Electric Cutting Tools, A–588–823	7/1/97–6/30/98
Japan: High Power Microwave Amplifiers and Components Thereof, A–588–005	7/1/97–6/30/98
Japan: Industrial Nitrocellulose, A–588–812	7/1/97–6/30/98
Japan: Synthetic Methionine, A–588–041	7/1/97–6/30/98
Kazakhstan: Solid Urea, A–834–801	7/1/97–6/30/98
Kyrgyzstan: Solid Urea, A–835–801	7/1/97–6/30/98
Latvia: Solid Urea, A–449–801	7/1/97–6/30/98
Lithuania: Solid Urea, A–451–801	7/1/97–6/30/98
Moldova: Solid Urea, A–841–801	7/1/97–6/30/98
Republic of Korea: Industrial Nitrocellulose, A–580–805	7/1/97–6/30/98
Romania: Solid Urea, A–485–601	7/1/97–6/30/98
Russia: Ferrovanadium, A–821–807	7/1/97–6/30/98
Russia: Solid Urea, A–821–801	7/1/97–6/30/98
Tajikistan: Solid Urea, A–842–801	7/1/97–6/30/98
Thailand: Butt-Weld Pipe Fittings, A–549–807	7/1/97–6/30/98
Thailand: Canned Pineapple, A–549–813	7/1/97–6/30/98
Thailand: Furfuryl Alcohol, A–549–812	7/1/97–6/30/98

	Period
The People's Republic of China: Butt-Weld Pipe Fittings, A–570–814	7/1/97–6/30/98
The People's Republic of China: Industrial Nitrocellulose, A–570–802	7/1/97–6/30/98
The People's Republic of China: Sebacic Acid, A–570–825	7/1/97–6/30/98
The Ukraine: Solid Urea, A–823–801	7/1/97–6/30/98
The United Kingdom: Industrial Nitrocellulose, A–412–803	7/1/97–6/30/98
Turkmenistan: Solid Urea, A–843–801	7/1/97–6/30/98
Turkey: Pasta, A–489–805	7/1/97–6/30/98
Uzbekistan: Solid Urea, A–844–801	7/1/97–6/30/98
Countervailing Duty Proceedings	
European Economic Community: Sugar, C–408–046	1/1/97–12/31/97
Italy: Pasta, C–475–819	1/1/97–12/31/97
Turkey: Pasta, C–489–806	1/1/97–12/31/97

Suspension Agreements

None.

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. In recent revisions to its regulations, the Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 71(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of JULY 1998. If the Department does not receive, by the last day of JULY 1998, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 24, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–17532 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–801]

Melamine Institution Dinnerware Products From Indonesia: Notice of Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Katherine Johnson, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUMMARY: On March 23, 1998, the Department of Commerce (''the Department'') published in the **Federal Register** (63 FR 13837) a notice announcing the initiation of an administrative review of the antidumping duty order on melamine institutional dinnerware products from Indonesia, covering the period August 22, 1996, through January 31, 1998. This review has now been rescinded as a result of the withdrawal of the request for administrative review by the interested party.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1998, the Department received a request from the American Melamine Institutional Tableware Association (AMITA), the petitioner in the original investigation, and its member companies, Carlisle Food Service Products and Prolon, Inc., to conduct an administrative review of its entries, pursuant to 19 CFR 351.213(b) of the Department's regulations. The period of review is August 22, 1996, through January 31, 1998. On March 23, 1998, the Department published in the **Federal Register** (63 FR 13837) a notice announcing the initiation of an administrative review of the antidumping duty order on melamine institutional dinnerware products from Indonesia, covering the period August 22, 1996, through January 31, 1998.

Termination of Review

On June 16, 1998, we received a timely request for withdrawal of the request for administrative review from AMITA and its member companies.

Because there were no other requests for administrative review from any other interested party, in accordance with section 351.213(d) of the Department's regulations, we have rescinded this administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: June 25, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–17533 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Emory University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated 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). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–018. *Applicant:* Emory University, Atlanta, GA 30322. *Instrument:* Electron Microscope, Model H–7500. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 63 FR 15832, April 1, 1998. *Order Date:* July 30, 1997.

Docket Number: 98–023. *Applicant:* University of Iowa, Iowa City, IA 52242. *Instrument:* Electron Microscope, Model JEM–1220. Manufacturer: JEOL, Ltd., Japan. *Intended Use:* See notice at 63 FR 25015, May 6, 1998. *Order Date:* February 3, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–17442 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

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 an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is 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, DC 20230. Application may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–031. *Applicant:* University of California, San Diego, Department of Chemistry, 9500 Gilman Drive, MS–0358, La Jolla, CA 92093–0358. *Instrument:* Electron Beam Evaporation Source. *Manufacturer:* Oxford Applied Research, United Kingdom. *Intended Use:* The instrument will be used to study the atomic structure and magnetic properties of nanograin particles of permalloy (NiFe) in a silver matrix and in ultra high vacuum. These particles will be capped with Ta for studies in air. Application accepted by Commissioner of Customs: June 11, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–17445 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period January 1, 1998 through March 31, 1998. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period January 1, 1998 through March 31, 1998.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th

Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix—Subsidy Programs on Cheese Subject to an In-Quota Rate of Duty

Country and program(s)	Gross [1] subsidy	Net [2] subsidy
Austria: European Union Restitution Payments	$0.22	$0.22
Belgium: EU Restitution Payments	0.07	0.07
Canada: Export Assistance on Certain Types of Cheese	0.24	0.24
Denmark: EU Restitution Payments	0.10	0.10
Finland: EU Restitution Payments	0.27	0.27
France: EU Restitution Payments	0.16	0.16
Germany: EU Restitution Payments	0.20	0.20
Greece: EU Restitution Payments	0.00	0.00
Ireland: EU Restitution Payments	0.23	0.23
Italy: EU Restitution Payments	0.17	0.17
Luxembourg: EU Restitution Payments	0.07	0.07
Netherlands: EU Restitution Payments	0.10	0.10
Norway: Indirect (Milk) Subsidy	0.33	0.33
Consumer Subsidy	0.15	0.15
Total	0.48	0.48
Portugal: EU Restitution Payments	0.09	0.09
Spain: EU Restitution Payments	0.13	0.13
Switzerland Deficiency Payments	0.89	0.89
U.K.: EU Restitution Payments	0.08	0.08

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 98–17531 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of Meeting of National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the 83rd Annual Meeting of the National Conference on Weights and Measures will be held July 12 through 16, 1998, at the Portland Hilton Hotel, Portland, Oregon. The meeting is open to the public. The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the states, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, held in January 1998, as well as the annual meeting, brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to (15 U.S.C. 272(B)(6)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the states in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the states of commercial weighting and measuring.

DATES: The meeting will be held July 12–16, 1998.

LOCATION: The Portland Hilton, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT:

Gilbert M. Ugiansky, Executive Secretary, National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone: (301) 975–4004.

Dated: June 25, 1998.

Robert E. Herbner,

Acting Deputy Director, National Institute of Standards and Technology.

[FR Doc. 98–17461 Filed 6–30–98; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

Application of Cantor Financial Futures Exchange as a Contract Market in U.S. Treasury Bond, Ten-Year Note, Five-Year Note and Two-Year Note Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Application of the Cantor Financial Futures Exchange for initial designation as a contract market.

SUMMARY: The Cantor Financial Futures Exchange, Inc. (''CFFE'' or ''Exchange''), a New York not-for-profit corporation, has applied for designation as a contract market for the computer-based trading of US Treasury bond, ten-year note, five-year note and two-year note futures contracts. CFFE has been formed pursuant to an agreement between the New York Cotton Exchange (''NYCE'') and CFFE, LLC, a subsidiary of Cantor Fitzgerald, LP (''Cantor'').[1] Under the agreement, CFFE trading would be conducted on the same trading system that another Cantor subsidiary, Cantor

[1] CFFE, LLC is a limited liability company whose equity interest is held by Cantor (ninety-nine percent) and CFFE Holdings, LLC (one percent).

Fitzgerald Securities, LLC (''CFS''), currently operates as an interdealer-broker in the US Treasury securities market. CFFE's regulatory responsibilities would be handled by NYCE. CFFE has not previously been approved by the Commission as a contract market in any commodity. Accordingly, in addition to the terms and conditions of the proposed futures contracts, the Exchange has submitted to the Commission a proposed trade-matching algorithm; proposed rules pertaining to CFFE governance, disciplinary and arbitration procedures, trading standards and recordkeeping requirements; and various other materials to meet the requirements for a board of trade seeking initial designation as a contract market. CFFE trades would be cleared and settled by the Commodity Clearing Corporation (''CCC'') which is wholly owned by NYCE. Notice of CFFE's application was previously published on February 3, 1997 (63 FR 5505) for a comment period ending on April 6, 1998. That comment period was later extended until April 27, 1998 (63 FR 17823 (April 10, 1998)). Since the Commission's original publication of the CFFE's proposal, the Exchange has made additional submissions to the Commission. Those submissions revise a number of features of CFFE's proposal and generally include further explication and supporting materials with respect to the entire proposal. The submissions are available for review in the Commission's public files.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets (''Division'') has determined to publish CFFE's proposal again so that the public may review and comment on the Exchange's additional submissions. The Division believes that publication of the proposal for comment at this time is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act. The Division seeks comment regarding all aspects of CFFE's application and addressing any issues commenters believe the Commission should consider.

DATES: Comments must be received on or before July 16, 1998.

FOR FURTHER INFORMATION CONTACT: With respect to questions about the terms and conditions of CFFE's proposed futures contracts, please contact Thomas M. Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; Telephone number: (202) 418–5278; Facsimile number: (202) 418–5527; or Electronic mail: tleahy@cftc.gov. With respect to questions about any of CFFE's other proposed rules or related NYCE proposed rules, please contact David Van Wagner of the Division of Trading and Markets at the same address; Telephone number: (202) 418–5481; Facsimile number: (202) 418–5536; or Electronic mail: dvanwagner@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

CFFE has applied for designation as a contract market for the computer-based trading of US Treasury bond, ten-year note, five-year note and two-year note futures contracts. CFFE has not been approved previously by the Commission as a contract market in any commodity. Thus, in addition to the terms and conditions of the proposed futures contracts, the Exchange has submitted, among other things, proposed trade-matching algorithm procedures and rules pertaining to CFFE governance, trade practice surveillance, disciplinary and arbitration procedures, trading standards and recordkeeping requirements.

CFFE would be wholly owned by CFFE Regulatory Services, LLC. Equity interest in CFFE Regulatory Services, LLC would be held entirely by NYCE (ten percent equity interest) and NYCE's members (ninety percent equity interest).[2] CFFE's contracts would trade over a computer-based trading system maintained by CFS (the ''Cantor System''). CFS is an interdealer-broker in the US Treasury securities market, and it currently operates the Cantor System to match orders placed with it by broker-dealers and other customers. Although neither Cantor nor any of its affiliates would have any equity interest in CFFE, Cantor would collect a transaction fee for each trade executed at CFFE through the Cantor System.

CFFE would be governed by a thirteen-person Board of Directors—eight of whom would be appointed by Cantor and five of whom would be appointed by NYCE. Three of the eight CFFE directors appointed by Cantor would be public directors who could not be affiliated with the CFFE, NYCE or Cantor. NYCE would be responsible for providing all of CFFE's regulatory services including its compliance, surveillance, arbitration and disciplinary programs.[3] Because of NYCE's involvement in CFFE's regulatory programs, all CFFE rule changes that involved regulatory procedures would have to be approved by NYCE's Board of Managers in addition to CFFE's Board of Directors.

CFFE proposes to trade each of its four contracts from 7:30 a.m. to 5:30 p.m., New York time, on each business day. Under the proposal, all CFFE trading would be conducted through: (1) CFFE Class B Members (*i.e.*, NYCE members), (2) CFFE Associate Members, or (3) futures commission merchants, introducing brokers and commodity trading advisors, without CFFE membership, who have entered into a guarantee agreement with a CCC clearing member to clear their CFFE trades. These persons and entities would be collectively referred to as Screen-Based Traders (''SBT'') under CFFE's rules. SBTs or their associated persons, referred to as Authorized Traders (''AT'') under CFFE's rules, would place orders, whether for their own or for their customers' accounts if they are properly registered, by phoning CFFE terminal operators (''TO'')[4] located at a Cantor facility.[5] For each order, the SBT or Authorized Trader who placed an order would be required to provide the TO with a customer or proprietary account identifier, the relevant contract and the quantity and price.[6] The CFFE TO would promptly enter this information into the Cantor System via a terminal keyboard.

The Cantor System would match eligible CFFE orders according to a trade-matching algorithm that would be similar to the algorithm that CFS currently uses to match orders as an interdealer-broker in the US Treasury securities market. Under the algorithm, the Cantor System would post the best bid (best offer) available at any given time and its quantity. Any inferior bids (offers) that were posted earlier would be removed from the System, while inferior bids (offers) entered subsequently would be rejected by the System. Responsive orders to hit outstanding bids (or take outstanding offers) would be matched with bids (offers) on a time-priority basis at the designated bid (offer) price. Under

[2] NYCE would have the sole voting interest in CFFE Regulatory Services, LLC.

[3] In this regard, CFFE's proposed rules would incorporate by reference certain NYCE rules, such as its rules governing arbitration and disciplinary procedures.

[4] All CFFE TOs would be compensated by CFS.

[5] All phone conversations between SBTs or ATs and CFFE TOs would be recorded and time-indexed by a Cantor tape-recording system. CFFE proposes to retain those recordings for a 45-day period.

[6] SBTs and ATs also would be required to fill out an order ticket for each customer order.

CFFE's rules, accounts that placed such responsive orders would be known as ''aggressors.'' Aggressors who placed orders that hit all outstanding bids (take all outstanding offers) in the Cantor System at any particular time would be permitted to engage in an exclusive trading period with the best bidder (offeror). During this exclusive trading period, the aggressor and the best bidder (offeror) would ''work up'' the quantity for a trade at the previously-established trade price. During this work up process, each party would be given alternating six-second periods either to agree to do a transaction at the quantity offered by the other party or to counteroffer for some other quantity. This work up process would continue until the parties agreed to a transaction quantity.[7] During an exclusive trading period, the Cantor System would accept subsequent bids and offers at the same price as the ongoing trade, and these orders would be matched on a time-priority basis to the extent possible immediately upon the conclusion of the exclusive period. The CFFE would provide an exclusive trading period to participants who were earliest in posting best market bids and offers and to aggressors in order to create an incentive for participants to place orders at attractive prices and to provide liquidity.

Upon the execution of a CFFE transaction, the TO would provide an oral confirmation of the trade to the submitting SBT or AT by telephone and the SBT or AT would record the details of the trade on an order ticket.[8] Upon execution of a trade, the Cantor System also would electronically transmit matched-trade data to CCC for clearing and settlement purposes. For each trade, CCC would transmit transaction information to the appropriate clearing members via the Trade Input Processing System (''TIPS'').[9] Clearing members would be required to accept or reject each trade within thirty minutes of its posting on TIPS.

The Cantor System also would transmit relevant trade data to NYCE each day for compliance and surveillance purposes.

Since the Commission's original publication of the CFFE's proposal for comment, the Exchange has revised a number of aspects of its proposal. Among the revisions, the CFFE has provided an extensive explanation of its TOs' responsibilities and restrictions and has stated that it would register all TOs with the Commission as floor brokers. The Exchange also has created a new membership category—Associate Members—and has clarified that all holders of CFFE trading privileges who could execute customer orders would be Commission registrants. In addition, all trading privilege holders would, under CFFE's rules, be subjected to the Commission's Part 155 trading standards. The Exchange also has provided further explanation and justification of its trade-matching algorithm, including the procedures for exclusive trading periods and market-crossing sessions.

Finally, among the more significant additions to its submission, the CFFE has determined that the CCC, rather than the New York Board of Clearing, would clear and settle Exchange transactions. It also has submitted an extensive description of CFFE's compliance and surveillance programs and the role of NYCE staff in administering these programs.

III. Request for Comments

Any person interested in submitting written data, views, or arguments on the proposal to designate CFFE should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. The Division seeks comment on all aspects of CFFE's application for designation as a new contract market, as well as CCC's proposal to serve as CFFE's clearing organization. Reference should be made to the CFFE application for designation as a contract market in US Treasury bond, ten-year note, five-year note and two-year note futures contracts. Copies of the proposed terms and conditions are available for inspection at the Office of the Secretariat at the above address. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100.

Other materials submitted by CFFE and CCC may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552), except to the extent that they are entitled to confidential treatment pursuant to 17 CFR 145.5 or 145.9. Requests for copies of such materials should be made to the Freedom of Information, Privacy and Sunshine Act compliance staff of the Office of the Secretariat at the Commission headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, DC, on June 25, 1998.

Alan L. Seifert,

Deputy Director.

[FR Doc. 98–17501 Filed 6–30–98; 8:45 am]

BILLING CODE 6351–01–U

[7] The entire work up process would be conducted through CFFE TOs who would enter each party's desired quantity into the Cantor System. The System itself would automatically trigger the alternating six-second exclusive period for each party.

[8] TOs would receive and input orders from SBTs and ATs and relay back trade confirmations. TOs could not maintain any sort of order book or deck, nor could they exercise any discretion over orders.

[9] CCC estimates that CFFE trades would be posted on TIPS within fifteen minutes of their execution.

COMMODITY FUTURES TRADING COMMISSION

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

ACTION: Membership Change of Performance Review Board.

SUMMARY: In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act of 1978, notice is hereby given that the following employees will serve as members of the Commission's Performance Review Board.

Chairperson: Linda Ferren, Executive Director. Members: Susan G. Lee, Executive Assistant to the Chairperson; Daniel Waldman, General Counsel; Steven Manaster, Director, Division of Economic Analysis; Geoffrey Aronow, Director, Division of Enforcement; I. Michael Greenberger, Director, Division of Trading and Markets.

DATES: This action will be effective on July 1, 1998.

ADDRESSES: Commodity Futures Trading Commission, Office of Human Resources and Support Services, Three Lafayette Centre, Suite 4100, Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Ann Linnertz, Director, Office of Human Resources and Support Services, Commodity Futures Trading Commission, Office of Human Resources and Support Services, Three Lafayette Centre, Suite 4100, Washington, D.C. 20581, (202) 254–3275.

SUPPLEMENTAL INFORMATION: This action which changes the membership of the Board supersedes the previously published **Federal Register** Notice, September 11, 1997.

Issued in Washington, D.C. on June 24, 1998.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 98–17498 Filed 6–30–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Application For Former Spouse Payments From Retired Pay; DD Form 2293; OMB Number 0730—[To Be Determined].

Type of Request: Reinstatement.

Number of Respondents: 20,520.

Responses Per Respondent: 1.

Annual Responses: 20,520.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 5,130.

Needs and Uses: Under 10 U.S.C. 1408, state courts may divide military retired pay as property or order alimony and child support payments from the retired pay. The former spouse may apply to the Defense Finance and Accounting Service (DFAS) for direct payment of these monies by using the DD Form 2293, Application For Former Spouse Payments From Retired Pay. This information collection is needed to provide DFAS the basis data needed to process the request. The respondents of this information collection are spouses or former spouses of military members. Information on the DD Form 2293 is also used to determine the applicant's current status and contains statutory required certifications the applicant/former spouse must make when applying for payments. This collection of information was formerly approved by the Office of Management and Budget under OMB Nubmer 0704–0182.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Office for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 25, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–17404 Filed 6–30–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM).

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 31, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, (MTOP–Q and MTOP–T), 6511 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: (Diane Coleman or Sylvia Walker). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Tender of service—Mobile Homes/Boats, OMB Number 0704–0056.

Needs and Uses: Since mobile homes/boats move at Government expense. Data is needed to choose the best service at least cost. The information provided serves as a bid for contract to transport mobile homes/boats, and the carrier must provide the information in order to become a DOD-approved carrier. Carrier with best service for lease cost receives the contract.

Affected Public: Business or other for-profit.

Annual Burden Hours: 444.

Number of Respondents: 23.

Responses Per Respondent: 125.

Average Burden Per Response: 1 hour 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Carrier Qualification Program (CQP) is designed to protect the interest of the Government and to ensure that the Department of Defense (DOD) deals with responsible carriers having the capability to provide quality and dependable service. This program became necessary because deregulation of the motor carrier industry brought an influx of new carriers into DOD's transportation market, many of which are unreliable or do not have capability to provide consistent dependable transportation services.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–17482 Filed 6–30–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Committee Meeting Notice

AGENCY: United States Army School of the Americas, Training and Doctrine Command.

ACTION: Notice; withdrawal.

SUMMARY: This document withdraws from consideration the Committee Meeting Notice published in the **Federal Register** on June 17, 1998 (Vol. 63, No. 116 FR 33055–33056). Reason for withdrawal is based on the expired membership of this subcommittee which precludes the meeting from taking place.

FOR FURTHER INFORMATION CONTACT: United States Army School of the Americas, Attention: TMD, MAJ Clemente, Room 333, Building 35, Fort Benning, GA 31905.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–17484 Filed 6–30–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (E–SEIS) for Permitting Continued Mining Operations of PCS Phosphate, White Springs (Hamilton County), Florida

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, Regulatory Division (Corps), has received a request for a modification to Department of the Army permit no. 19840452 for the PCS Phosphate-White Springs mine (PCS Phosphate), located in Hamilton County, Florida. A more minor modification was issued in 1997. The Corps has determined that the proposed modification of the existing permit will involve substantial changes that are relevant to environmental concerns. Therefore, a Supplement to the Final Environmental Impact Statement, dated February 1986 will be prepared.

ADDRESSES: Chief, Regulatory Division, U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232–0019.

FOR FURTHER INFORMATION CONTACT: Osvaldo Collazo, 904–232–1675.

SUPPLEMENTARY INFORMATION: PCS Phosphate has been engaged in phosphate mining in its project area in Hamilton County under permits from the Corps, Florida Department of Environmental Protection (DEP), and Hamilton County. The current Federal permit will expire in 2002. PCS Phosphate has begun the application process with state and Federal regulatory agencies for the permitting of continued mining operations within the company's 100,000-acre project area in Hamilton County. The modification involves mining new sites within the general boundary of the project area. This is the same project area reviewed under the original EIS.

Proposed new mining areas include jurisdictional wetlands. Permit modification would be issued under Section 404 of the Clean Water Act, as amended. Permits would be issued under a joint permitting process with the DEP. A new permit would also be required from Hamilton County. Other state, regional, and Federal agencies are expected to participate in the permit evaluation. Mitigation for loss of wetland functions and values is anticipated.

In addition, PCS Phosphate has requested that the DEP initiate a process under s. 403.752, Florida Statutes for coordinated review and agency actions. The process will be expected to result in a binding ecosystem management agreement, which would include the required state permits and approvals. The ecosystem management agreement process requested by PCS Phosphate includes the opportunity for public participation and comment. The Corps agreed that these public meetings would also serve the purpose of the scoping process and review and the SEIS and permit actions. The first public meeting was held on December 11, 1997. Public comment was initially requested in two areas: (1) the scope of the environmental studies to be performed for support of permitting actions and (2) identification of persons or organizations for both active participation in the process and receipt of periodic mailings. Coordination has included a number of Federal, state, regional, local agencies, and environmental groups including but not limited to the following: U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Florida Department of Environmental Protection, State Historic Preservation Officer, Suwannee River Water Management District, Hamilton County, Florida Department of Community Affairs, Florida Game and Freshwater Fish Commission, Sierra Club, 4 Rivers Audubon, and Florida Defenders of the Environment.

Scoping: The public meetings provided much information that has served the scoping process. A draft Plan of Study for the Ecosystem Management Agreement and the SEIS has been prepared. This Plan of Study is intended to fulfill the information requirements for all anticipated regulatory actions. The results of the study will be compiled into a Supplemental Technical Background Document (TDB) and analyzed in a SEIS. The document can be made available for review upon request. The Corps will hold a formal public scoping meeting on July 30, 1998. All parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process.

Public Participation: We invite the participation of affected Federal, state and local agencies, and other interested private organizations and individuals.

Draft SEIS Preparation: We estimate that the Supplemental TBD will be available to the public on or about mid 1999, and the Draft SEIS will be prepared later that year.

Dated: June 17, 1998.

Marie G. Burns,

Acting Chief, Regulatory Division.

[FR Doc. 98–17483 Filed 6–30–98; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board

AGENCY: National Assessment Governing Board; Department of Education.

ACTION: Notice of Information Collection Activity; Request for Comment.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces a proposed information collection request (ICR) of the National Assessment Governing Board. The information collection is to conduct pilot tests of items developed for use in the proposed voluntary national tests in 4th grade reading and 8th grade mathematics. Before submitting the ICR to the Office of Management and Budget (OMB), the Governing Board is soliciting comments on the information collection as described below.

DATES: Comments must be submitted on or before August 31, 1998.

ADDRESSES: Submit written comments identified by ''ICR: Voluntary National Tests—Pilot,'' by mail or in person addressed to Ray Fields, Assistant Director for Policy and Research, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC, 20002. Comments may be submitted electronically by sending electronic mail (e-mail) to Ray __ Fields@ED.GOV. Comments sent by e-mail must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

All written comments will be available for public inspection at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ray Fields, Assistant Director for Policy and Research, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC, 20002, Telephone: (202) 357–0395, e-mail: Ray __ Fields@ED.GOV.

SUPPLEMENTARY INFORMATION:

I. Information Collection Request

The National Assessment Governing Board is seeking comments on the following Information Collection Request (ICR).

Type of Review: New.

Title: Pilot Tests for the Voluntary National Tests in 4th Grade Reading and 8th Grade Mathematics.

Affected Entities: Parties affected by this information collection are state, local, Tribal Government or non-public education agencies.

Abstrate: Pub. L. 105–78 vests exclusive authority to develop the voluntary national tests in the Governing Board and also prohibits the use of Fiscal Year 1998 funds for pilot testing, field testing, implementation, administration, or distribution of voluntary national tests. If Congress does not prohibit further development of the voluntary national tests after September 30, 1998, the Governing Board intends to begin pilot testing of items (i.e., test questions) in March 1999.

Public Law 105–78 also requires the Governing Board to make four determinations about the voluntary national tests: (1) the extent to which test items selected for use on the tests are free from racial, cultural, or gender bias, (2) whether the test development process and test items adequately assess student reading and mathematics comprehension in the form most likely to yield accurate information regarding student achievement in reading and mathematics, (3) whether the test development process and test items take into account the needs of disadvantaged, limited English proficient, and disabled students, and (4) whether the test development process takes into account how parents, guardians, and students will appropriately be informed about testing content, purpose and uses.

The purpose of the pilot test is to gather data on the test questions in order to construct multiple equated test forms (i.e., test booklets that are essentially interchangeable) in 4th grade reading and in 8th grade mathematics and to provide information related to the four determinations. Test forms would be constructed on the basis of the pilot test data and would be field-tested in March of 2000. The overall purpose of the field-testing is to ensure that the test forms are in fact equated to each other. Test forms developed in this first cycle would be available for use in March 2001. Further item and test development is expected, with pilot testing in March of 2000 and 2001, and field-testing, for respective cycles, in March 2001 and 2002.

Approximately 1,100 test items in 4th grade reading and 1,100 test items in 8th grade mathematics will be pilot tested in March 1999. Individual 4th grade students will respond to 45 reading items; individual 8th grade students will respond to 60 mathematics items. This is the same number of items that will be on the respective test forms for field-testing. The objective is to produce six equated test forms in reading and in mathematics for the year 2000 field test. Thus, 270 reading test items and 360 mathematics test items are required for the field-test forms. This provides a ratio of pilot tested items to field-tested items of 4:1 for reading and 3:1 for mathematics.

The pilot tests will be conducted on nationally representative samples. The sample size is based on at least 800 students per test item. For 4th grade reading, the March 1999 pilot will involve an estimated 24,000 students in 558 schools. The March 2000 and 2001 pilot tests in 4th grade reading will each involve an estimated 16,000 students in 374 schools. For 8th grade mathematics, the March 1999 pilot test will involve an estimated 19,200 students in 344 schools. The March 2000 and 2001 pilot tests in 8th grade mathematics will each involve an estimated 13,000 students in 231 schools. The reason for the smaller sample sizes in 2000 and 2001 is that the target is to field test four test forms in the second and third development cycles as opposed to six in the first cycle (i.e., March 1999 pilot test, March 2000 field test).

In order to ensure adequate control and proper identification of the booklets of test items, and conduct necessary analyses of the data that results from the information collection, the following background information will be collected on the cover of the booklets of test questions: student name, date of birth, race/ethnicity, and sex (all to be supplied by the student), and special education status, limited English proficiency status, disadvantaged status, test administration accommodations, primary language, the test administrator under contract). Although students will write their name on each booklet for identification purposes during the administration of the pilot test, the students' names will be removed from the booklet shortly after the pilot test. Student names will not be included in the database for analysis and will not leave the school building where pilot testing is taking place. Instead, a unique numeric or alphanumeric identifier will be assigned to each booklet for tracking and analysis purposes. No third party notification or public disclosure burden is associated with this collection.

Burden Statement: The annual burden respondent estimate is based on 90 minutes of testing and 30 minutes of test administration activities (e.g., delivering instructions, handing out and collecting booklets, and providing background information as described above) per student, or two hours per student. For 4th grade reading, the burden estimate is 48,000 hours in 1999, 32,000 hours in 2000, and 32,000 hours in 2001. For 8th grade mathematics, the burden estimate is 38,400 hours in 19999, 26,000 hours in 2000, and 26,000 hours in 2001. Each respondent is required to respond only once per event. Respondents will be different individuals in different pilot test years.

Participation in the pilot test is voluntary. State, local, and non-public education agencies are not mandated or required to participate.

II. Request for Comments

The National Assessment Governing Board solicits comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Governing Board, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Governing Board's estimates of the burden of the proposed collection of information;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Public Record

A record has been established for this action. A public version of this record, including printed, paper versions of electronic comments, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Suite 825, 800 North Capital Street, NW., Washington, DC, 20002. Comments may be submitted electronically by sending electronic mail (e-mail) to Ray__Fields@ED.GOV. Comments sent by e-mail must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, the National Assessment Governing Board will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in

writing. The official record is the paper record maintained at the National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002.

List of Subjects

Pilot tests for the voluntary national tests in 4th grade reading and 8th grade mathematics and Information Collection Requests.

Dated: June 25, 1998.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 98–17408 Filed 6–30–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 31, 1998.

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

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

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

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review:

Title: Application for Seven Foreign Language and Area Studies Programs.

Frequency: Annually or Every 3 Years.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 469; Burden Hours: 43,213.

Abstract: Collect program and budget information to make grants to institution of higher education. This information collection falls under the streamlined process for discretionary grants under OMB Control Number 1890–0001.

Office of the Under Secretary

Type of Review: New.

Title: Local Implementation of Federal Programs.

Frequency: One time.

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

Reporting and Recordkeeping Hour Burden: Responses: 849; Burden Hours: 872.

Abstract: The Department of Education is charged with evaluating Title I of ESEA and other elementary and secondary education legislation enacted by the 103rd Congress. These studies will collect information on the operations and effects at the district level of legislative provisions and federal assistance, in the context of state education reform efforts. Findings will be used in reporting to Congress and improving information dissemination. Respondents are local superintendents, directors of federal programs, directors of research and assessment, and school principals.

No comments were received during the 60-day comment period. Minor revisions have been made to the instrument during the interim. There are two differences between the earlier version of the survey and the revised version being submitted to OMB, the are as follows:

(1) The original survey addressed a wide range of topics concerning the implementation of federal programs, with emphasis on data use, cross-program coordination, intergovernmental relations, and services to homeless children and youth. The revised survey is more focused on data needed for ED reporting to Congress under the Government Performance and Results Act (GPRA). It incorporates a number of data elements required in the Department's Strategic Plan and Annual Performance Plans. Questions about services to homeless children and youth have been dropped, and the number of questions about intergovernmental relations and the implementation of specific federal programs has been reduced.

(2) The revised version required a smaller sample. Rather than drawing a large random sample of approximately 1500 districts stratified by proverty and district size as previously planned, the instrument will now draw a smaller random sample of 789 districts that will permit national estimates, but not estimates for distinct strata. Additionally, the entire sample of districts in the ED Study of Education Resources and Funding is being incorporated into this sample so that the two studies can share key data elements.

[FR Doc. 98–17535 Filed 6–30–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–000]

CNG Transmission Corporation; Notice of Informal Settlement Conference

June 25, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, July 1, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E.,

Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-reference docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact William J. Collins at (202) 208–0248.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17429 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–619–000]

Columbia Gas Transmission Corporation; Notice of Application

June 25, 1998.

Take notice that on June 17, 1998, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 12801 Fair Lakes Parkway, Fairfax, Virginia, 22030–1046, filed an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, for permission and approval to abandon certain natural gas services, as more fully described in the application.

Columbia proposes to abandon from service Munderf Storage Field and transmission pipelines 4393 and 4394, all located in Jefferson County, Pennsylvania. Due to the deteriorating condition of the casing in the only well (Munderf Storage Well 552) in Munderf Storage field and at the recommendation of the State of Pennsylvania Department of Environmental Resources, Columbia plugged Well 552 on July 13, 1994. Columbia has determined that because of changes in market requirements, sources of supply and transmission facilities in the Munderf area, that current and future market requirements can be met without the Munderf Storage Field. Columbia has also determined that with the abandonment of Munderf Storage Field, transmission lines 4393 and 4394, consisting of 677 feet of 4-inch diameter pipeline, will no longer be needed. The estimated net debit to accumulated provision for depreciation for both the storage field and lines is $138,475.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 16, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17424 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2580–000]

HDI Associates III; Notice of Withdrawal

June 25, 1998.

Take notice that on June 22, 1998, HDI Associates III tendered for filing Notice of Withdrawal of its filing made on April 17, 1998, in Docket No. ER98–2580–000.

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 216 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.216). All such motions and protests should be filed on or before July 7, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17494 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2581–000]

HDI Associates III; Notice of Withdrawal

June 25, 1998.

Take notice that on June 22, 1998, HDI Associates III tendered for filing Notice of Withdrawal of its filing made on April 17, 1998, in Docket No. ER98–2581–000.

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 216 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.216). All such motions and protests should be filed on or before July 7, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17495 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–606–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

June 25, 1998.

Take notice that on June 11, 1998, as supplemented on June 18, 1998, Koch Gateway Pipeline Company (Applicant), 600 Travis Street, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–606–000 a request pursuant to Sections 157.205, 157.208(a)(2) and 157.211(a)(2) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208, and 157.211) for approval to acquire the facilities of Five Flags Pipeline Company (Five Flags), construct two interconnections, and authorize the use of five existing delivery points in jurisdictional service, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to acquire from Five Flags approximately 41 miles of ten-inch and 15 miles of eight-inch pipeline located in Santa Rosa and Escambia Counties, Florida. Applicant states that the acquisition will not include any compression facilities, because there is none on the Five Flags system. Applicant further proposes to construct and operate two interconnections between the existing facilities of Five Flags and Applicant. It is asserted that once connected, these facilities will serve as interconnections between the systems of Applicant and Florida Gas Transmission, another interstate pipeline. Finally, Applicant proposes to operate five existing delivery points on the Five Flags system as jurisdictional delivery points.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene 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 activities 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 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17423 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–58–000]

National Fuel Gas Supply Corporation; Notice of Refund Report

June 25, 1998.

Take notice that on June 23, 1998, National Fuel Gas Supply Corporation (National) tendered for filing a refund report pursuant to the Commission's September 27, 1996, ''Opinion and Order Approving the Gas Research Institute 1997 Research and Development Program'' issued in Docket No. RP96–267–000.

National states that it has refunded the Gas Research Institute demand surcharge based on the non-discounted GRI dollars paid by each firm shipper during the 1997 calendar year as a percentage of the total non-discounted GRI demand dollars paid by all firm shippers. National further states that it made these refunds in the form of credits to invoices issued on June 11, 1998. National states that the total credit amounted to $685,234.

National states that the notice of the refund and refund amounts have been posted on National's EBB and copies of National's filing were served on National's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385. 214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17425 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2588–000]

Newfound Hydroelectric Company; Notice of Withdrawal

June 25, 1998.

Take notice that on June 22, 1998, Newfound Hydroelectric Company tendered for filing Notice of Withdrawal of its filing made on April 17, 1998, in Docket No. ER98–2588–000.

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 216 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.216). All such motions and protests should be filed on or before July 7, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17496 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2042–010]

Public Utility District No. 1 of Pend Oreille County; Notice of Offer of Settlement

June 25, 1998.

On May 14, 1998, the United States Department of the Interior, through the Bureau of Indian Affairs and the U.S. Fish and Wildlife Service, the Public Utility District No. 1 of Pend Oreille County, Washington, the Kalispel Tribe of Indians, the Washington State Department of Fish and Wildlife, and the United States Forest Service filed an

Offer of Settlement which, if approved by the Commission, would resolve the pending license amendment application for the Box Canyon Project No. 2042, filed by the District on February 18, 1997.

The matters that would be resolved by the settlement pertain to protection, mitigation, or enhancement of resources affected by project operations, as well as the Kalispel Indian Reservation and national forest lands, and annual charges for the use and occupancy of Indian trust lands.

Anyone may submit comments on the Offer of Settlement in accordance with the requirements of the Commission's Rules of Practice and Procedure pertaining to submission of settlement offers, 18 CFR 385.602(f), except that the provisions of subsection 602(f)(2) are hereby waived to the extent necessary to extend the period for comments and reply comments as specified below. Comments must be filed by [the 20th day following publication of this notice in the Federal Register]; must bear in all capital letters the title ''COMMENTS,'' and Project No. 2042–010. Reply comments must be filed by [the 30th day following publication of this notice in the Federal Register]. Send the comments or reply comments (original and 8 copies) to: the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any comments or reply comments must also be served on each representative of the parties to the Offer of Settlement.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17426 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2589–000]

W.M. Lord Excelsior (Union Village Dam); Notice of Withdrawal

June 25, 1998.

Take notice that on June 22, 1998, W.M. Lord Excelsior tendered for filing Notice of Withdrawal of its filing made on April 17, 1998, in Docket No ER98–2589–000.

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 216 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.216). All such motions and protests should be filed on or before July 7, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17497 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1850–000, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Regulation Filings

June 22, 1998.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator Corporation

[Docket No. ER98–1850–000]

Take notice that on June 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between Automated Power Exchange, Inc., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket No. ER98–1851–000]

Take notice that on June 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between Enron Power Marketing, Inc., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket No. ER98–1854–000]

Take notice that on June 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between LG&E Energy Marketing, Inc., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER98–1856–000]

Take notice that on June 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between Duke Energy Trading & Marketing, L.L.C. and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER98–1857–000]

Take notice that on June 17, 1998, the California Independent System Operator

Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between Salt River Project Agriculture Improvement and Power District and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER98–1858–000]

Take notice that on June 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between PG&E Energy Services Corporation and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket No. ER98–1859–000]

Take notice that on June 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between Vitol Gas & Electric, L.L.C. and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER98–1862–000]

Take notice that on June 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between Arizona Public Service Company and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER98–1863–000]

Take notice that on June 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between Power Resource Managers, L.L.C., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER98–1866–000]

Take notice that on June 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between Edison Source and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER98–1867–000]

Take notice that on June 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between PacifiCorp and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER98–1889–000]

Take notice that on June 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between the City of Seattle, City Light Department and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Rochester Gas and Electric Corporation

[Docket Nos. ER98–2510–000 and ER98–2621–000]

Take notice that on June 17, 1998, Rochester Gas and Electric Corporation (RG&E), filed a response to a deficiency letter received from the Director, Division of Rate Applications, dated

May 18, 1998 (May 18, Letter) in these proceedings. As part of this response, RG&E submits two Service Agreements for service to Energetix, Inc., and NEV East LLC. RG&E states that these Service Agreements address all the items raised in the May 18, Letter.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER98–3385–000]

Take notice that on June 17, 1998, Carolina Power & Light Company (CP&L), tendered for filing un-executed Service Agreements between CP&L and 108 eligible buyers.[1]

Service to each eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Energy, Inc.

[Docket No. ER98–3392–000]

Take notice that on June 17, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Avista Energy, Inc. (Avista), as Transmission Customer.

A copy of the filing was served upon Avista.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Fortistar Power Marketing LLC

[Docket No. ER98–3393–000]

Take notice that on June 17, 1998, Fortistar Power Marketing LLC (FPM), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective sixty days from the date of this filing. In transactions where FPM will sell electric energy at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Carolina Power & Light Company

[Docket No. ER98–3394–000]

Take notice that on June 17, 1998, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements between CP&L and the following eligible buyers: Allegheny Power Service Corporation; The Energy Authority; The Power Company of America; and Northern Indiana Public Service Company. Service to each eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Carolina Power & Light Company

[Docket No. ER98–3395–000]

Take notice that on June 17, 1998, Carolina Power & Light Company (CP&L), tendered for filing un-executed Service Agreements between CP&L and the following eligible buyers: Avista Energy, Inc.; Cargill-Alliant, LLC; First Energy Trading and Power Marketing Incorporated; Plum Street Energy Marketing; and QST Energy Trading. Service to each eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Arizona Public Service Company

[Docket No. ER98–3396–000]

Take notice that on June 17, 1998, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3, for service to the California Independent System Operator Corporation.

A copy of this filing has been served on the Arizona Corporation Commission and the California Independent System Operator Corporation.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. New York State Electric & Gas Corporation

[Docket No. ER98–3397–000]

Take notice that on June 17, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a request for modification of its tax factor applicable to service rendered under Schedules 7 and 8 and Attachment H of NYSEG's OATT.

NYSEG requests an effective date of August 17, 1998, for the new tax factor.

NYSEG has served copies of the filing on the parties on the official service list of the OATT. In addition, NYSEG has mailed copies of the filing to NYPSC, NYPA, and the customers taking service under the OATT.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Company Services, Inc.

[Docket No. ER98–3398–000]

Take notice that on June 17, 1998, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies), filed a service agreement under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with The XERXE Group, Inc. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate sales to this customer.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Western Resources, Inc.

[Docket No. ER98–3401–000]

Take notice that on June 17, 1998, Western Resources, Inc., tendered for filing an agreement between Western Resources and Ameren Services Company, Western Resources and Missouri Public Service, Western Resources and Koch Energy Trading, Inc., Western Resources and PacifiCorp Power Marketing, Inc., and Western Resources and Omaha Public Power District. Western Resources states that the purpose of the agreements is to permit the customers to take service

[1] The list of the 108 eligible buyers can be found in Attachment A of the application filed June 17, 1998 in the above-docketed proceeding.

under Western Resources' market-based power sales tariff on file with the Commission. The agreements are proposed to become effective May 19, 1998, May 18, 1998, May 20, 1998, May 28, 1998 and June 17, 1998, respectively.

Copies of the filing were served upon Ameren Services Company, Missouri Public Service, Koch Energy Trading, Inc., PacifiCorp Power Marketing, Inc., Omaha Public Power District, and the Kansas Corporation Commission.

Comment date: July 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. PJM Interconnection, L.L.C.

[Docket No. ER98–3402–000]

Take notice that on June 17, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the service agreements for Network Integration Transmission Service for Delmarva Power & Light Company and PP&L, Inc., so as to reflect that, commencing June 1, 1998, the load of the Easton Utilities Commission will be served by PP&L rather than Delmarva.

Copies of this filing were served upon Delmarva, PP&L, Easton, the Maryland Public Service Commission, and the Pennsylvania Public Utility Commission.

PJM requests an effective date of June 1, 1998, for the amendments to the service agreements.

Comment date: July 7, 1998, 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 these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17430 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–334]

Duke Power Company, Notice of Availability of Draft Environmental Assessment

June 25, 1998.

A draft environmental assessment (EA) is available for public review. The draft EA analyzes the environmental impacts of allowing Duke Power Company, licensee for the Catawba-Wateree Project, P–2232–334, to authorize the Charlotte-Mecklenburg Utility District to construct additional facilities at the Catawba River Pumping Station to increase the water withdrawal from Mountain Island Lake for municipal water supply. The EA concludes the proposed action would not constitute a major federal action significantly affecting the quality of the human environment. The Catawba-Wateree Project is on the Catawba and Wateree rivers in North and South Carolina.

the draft EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the draft EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Please submit any comments on the draft EA within 30 days from the date of this notice. any comments conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation. Comments should be addressed to: Mr. David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426. Please affix Project No. 2232–334 to all comments.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17427 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11508–001]

Alaska Power and Telephone Company; Notice of Intent To Prepare an Environmental Assessment and Conduct Public Scoping Meetings and a Site Visit

June 25, 1998.

The Federal Energy Regulatory Commission (Commission) has received an application from the Alaska Power and Telephone Company (AP&T) to license the Wolf Lake Hydroelectric Project, Project No. 11508–001. The proposed 2.2-megawatt project would be located on the east side of Prince of Wales Island along Twelvemile Arm, near Hollis, Alaska.

The Commission intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act. In the EA, we will objectively analyze both site-specific and cumulative environmental impacts of the project, and reasonable alternatives as proposed by AP&T, as well as, economic and engineering impacts.

The draft EA will be issued and circulated to those on the mailing lists for this project. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

Scoping

At this time, we are asking agencies, native Alaskans, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the project coordinator, whose telephone number is listed below. Copies of the scoping document will also be available at the scoping meetings.

Scoping Meetings

Two scoping meetings will be held to hear comments on the project that could assist FERC staff in identifying the

scope of environmental issues that should be analyzed in the EA. A public meeting will be held at 6:30 PM on Wednesday, July 29, 1998, at the Hollis Public Library, in Hollis, Alaska. The agency scoping meeting will be held at 1:30 PM on Thursday, July 30, 1998, at the State Capitol Building, Governor's Conference Room, 3rd Floor, corner of 4th and Main Streets, Juneau, Alaska. The public and the agencies may attend either or both meetings, however.

Objectives

At the scoping meetings the staff will: (1) identify preliminary environmental issues related to the proposed project: (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The scoping meetings will be recorded by a court reporter, and all statements will become part of the Commission's public record for the project. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying and issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. All written correspondence should clearly show the following caption on the first page: Wolf Lake Hydroelectric Project, FERC Project No. 11508–001. Comments and information are due to the Commission no later than August 31, 1998.

Those with comments or information pertaining to this project should file it with the Commission at the following address: David P. Boergers, Acting Secretary, Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit

There will be a tour of the proposed project site on Tuesday, July 28, 1998, to familiarize concerned individuals with the project. Because of the absence of road access at the proposed project site, transportation to the project site would be via helicopter from a location to be identified in Hollis. Those interested in going on the site visit should call the AP&T contact, Mr. Greg Mickelson at (907) 826–3202 by July 21, 1998, for details. The trip is expected to last several hours. In the event of inclement weather or if we are unable to get to the proposed site on the scheduled date, the alternate site visit would be on Wednesday, July 29, 1998, at the same meeting place and time as the preferred scheduled visit.

Any questions regarding this notice maybe directed to Mr. Carl Keller at FERC, (202) 219–2831.

David P. Boergers,

Acting Secetary.

[FR Doc. 98–17428 Filed 6–30–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6119–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Motor Vehicle Emission Certification and Fuel Economy Compliance; Motorcycles, Light Duty Vehicles and Light Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Emission Certification and Fuel Economy Compliance; Motorcycles, Light Duty Vehicles and Light Duty Trucks; EPA ICR 0783.37, OMB 2060–0104, expires 31 August 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 31, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 0783.37.

SUPPLEMENTARY INFORMATION:

Title: Emission Certification and Fuel Economy Compliance; Motorcycles, Light Duty Vehicles and Light Duty Trucks; EPA ICR 0783.37, OMB 2060–0104, expires 31 August 1998. This is a request for extension of a currently approved collection.

Abstract: Under the Clean Air Act (42 U.S.C. 7525), manufacturers and importers of passenger cars, light trucks and motorcycles must have a certificate of conformity issued by EPA covering any vehicle they intend to offer for sale. In addition, car and truck manufacturers (and importers) must also submit iformation and reports required by the Energy Conservation and Policy Act (15 U.S.C. 2000 *et seq.*) cars and light trucks). EPA reviews vehicle information and test data to verify that the vehicle conforms to appropriate requirements and to verify that the proper testing has been performed. Subsequent audit and enforcement actions may be taken based, in part, on the information submitted. Information submitted is not available to the public until the vehicle(s) to which it pertains is offered for sale; after that time trade secrets qualify for confidential treatment; 42 U.S.C. 7542. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 08 April 1998, (63 FR 17172); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 13,831 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying

information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers and importers of passenger cars, light trucks and motorcycles.

Estimated Number of Respondents: 70.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 968,175 hours.

Estimated Total Annualized Cost Burden: $12,700,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No 0783.37 and OMB Control No. 2060–0104 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: June 25, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–17515 Filed 6–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6118–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; New Source Performance Standards for Portland Cement Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: New Source Performance Standards for Portland Cement Plants, OMB Control No. 2060–0025, expiration date 8/31/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 31, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1051.07

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standards for Portland Cement Plants, OMB Control No. 2060–0025; EPA ICR No. 1051.07; expiring 8/31/98. This is a request for the extension of a currently approved collection.

Abstract: Entities potentially affected by this action are portland cement plants with the following facilities: kilns, clinker coolers, raw mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems. The Administrator has judged that PM emissions from portland cement plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of portland cement plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and excess emissions. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/5/98. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 279 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Portland Cement Plants.

Estimated Number of Respondents: 113.

Frequency of Response: Initial and semiannual.

Estimated Total Annual Hour Burden: 7,968 hours.

Estimated Total Annualized Cost Burden: $941,720.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1051.07 and OMB Control No. 2060–0025 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: June 25, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–17516 Filed 6–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6119–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS Rubber Tire Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart BBB, Rubber Tire Manufacturing Plants, OMB Control Number 2060–0156, expiration date 7/31/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 31, 1998.

FOR FURTHER INFORMATION: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1158.06.

SUPPLEMENTARY INFORMATION:

Title: NSPS Subpart BBB, Rubber Tire Manufacturing Plants; EPA ICR No.1158.06; OMB Control No. 2060–0156, expiring 7/31/98. This is a request for an extension of a currently approved collection.

Abstract: All data in this ICR that is recorded and reported is required by 40 CFR Part 60 Subpart BBB. The monitoring and recordkeeping requirements include: maintain records of startups, shutdowns, malfunctions, periods where the continuous monitoring system is inoperative (60.7(b)), and of all measurements including performance test measurements, operating parameters of monitoring device results for catalytic or thermal incinerator, or carbon absorber (60.545 (a), (b) and (c)); monthly VOCs use, number of days in compliance period, and of other information needed to verify results of all monthly tests (60.545 (d) and (e)); of formulation data or results of Method 24 analysis of water-based sprays containing less than 1.0 percent of VOC (60.545(f); and of all other information required by this part recorded in a permanent file suitable for inspection. The file shall be retained for at least two years.

Following notification of startup, the reviewing authority might inspect the source to check if the pollution control devices are properly installed and operated. Performance test reports are used by the Agency to discern a source's initial capability to comply with the emission standard, and note the operating conditions specified above under which compliance was achieved. Data obtained during periodic visits by Agency personnel from records maintained by the respondents are tabulated and published for internal Agency use in compliance and enforcement programs. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

The required information consisting of emissions data and other information have been determined not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 2, 1997. (FR Volume 62, Number 231). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 73 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

New Affected Entities: Rubber Tire Manufacturing Plants

Estimated Number of Respondents: [31]

Frequency of Response: [Semiannually and annual reports]

Estimated Total Annual Hour Burden: [18,651] hours

Estimated Total Annualized Cost Burden: [$485,000]

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1158.06 and OMB Control No. 2060–0156 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: June 25, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–17519 Filed 6–30–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6118–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; General Conformity of Federal Actions to State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Determining Conformity of General Federal Actions to State Implementation Plans, OMB Control Number 2060–0279, ICR number 1637.04, expiring July 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 31, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1637.04.

SUPPLEMENTARY INFORMATION:

Title: Determining Conformity of General Federal Actions to State Implementation Plans, OMB Control Number 2060–0279, ICR number 1637.04, expiring July 31, 1998. This is a request for extension of a currently approved collection.

Abstract: Before any agency, department, or instrumentality of the Federal government engages in, supports in any way, provides financial assistance for, licenses, permits, or approves any activity, that agency has the affirmative responsibility to ensure that such action conforms to the State implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 18, 1998 (63 FR 8196); two comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 49 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Federal Agencies.

Estimated Number of Respondents: 280.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 13,600 hours.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1637.04 and OMB Control No. 2060–0279 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: June 25, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–17520 Filed 6–30–98; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

National Economic Council

Office of Science and Technology Policy

Enhancing Federal Training and Education Through Technology

AGENCY: National Economic Council and Office of Science and Technology Policy, EOP.

ACTION: Notice of inquiry.

SUMMARY: The National Economic Council and the Office of Science and Technology Policy, in consultation with the Office of Personnel Management, seek information about how to make the most efficient possible use of new information technologies for training federal employees in ways that also will accelerate the development of the broader commercial marketplace. This will require making full use of innovations in technology for commercial training, encouraging interoperability of products from competing vendors, and experimenting with new forms of public-private collaboration to develop high-quality instructional software.

DATES: Written comments should be received on or before September 15, 1998.

ADDRESSES: Interested parties should submit electronic version of comments at www.fed-training.org or written comments by mail to Martha Livingston, Office of Science and Technology, Room 423, Old Executive Office Building, Washington, D.C. 20502.

FOR FURTHER INFORMATION CONTACT: Diane Mayronne, Department of Labor, 2000 Constitution, Room N–5303, Washington, D.C. 20001. Telephone: (202) 219–9587, ext. 171. Fax: (202)-7968. Additional information and materials are available at www.fed-training.org.

SUPPLEMENTARY INFORMATION:

Background

The Administration is interested in the ability of new information and communications technologies to enhance lifelong learning by expanding access, reducing cost, and improving quality. For example:

- Access to education and training could be expanded by allowing adults to learn at a time, place, and pace that is convenient for them—using the Internet, CDROM, and/or other technology-mediated forms of instruction.
- The quality of education could be improved through the use of technologies such as: modeling and simulation and case-based reasoning, which enable ''learning by doing''; intelligent tutoring systems, which can respond to the individual needs of the learner and recognize common mistakes; synchronous and asynchronous learning networks, which can encourage the formation of ''communities of learners'' between students and teachers; and the appropriate use of multimedia, which can increase retention and ''time on task.''
- Cost for the development of high-quality instructional content/software could be reduced by: greater re-use of instructional modules; better authoring tools; and open specifications for instructional management systems—such as the EDUCOM Instructional Management System.
- Relevance could be increased by reducing the time that is required to develop instructional software, thereby providing timely technology-based training materials to the learner.

The Administration is pursuing a number of policies to realize this vision, including: (1) Eliminating barriers to broader adoption of distance learning by both individuals and institutions through reforms of the Higher Education

Act; (2) increasing investment in R&D for learning technologies; (3) encouraging experimentation and collaboration in the use of distance learning with a new Department of Education grant program called ''Learning Anytime, Anywhere Partnerships''; and (4) encouraging federal agencies to make better use of information technology to train their own employees. This Notice of Inquiry focuses on this last issue.

Encouraging Federal Agencies To Make Better Use of Learning Technology

Clearly, efficient management of the federal government requires continuous investment in training. The demand for training has increased as new technologies reshape the workplace in ways that both make federal employees more productive and allow them to improve the service they provide. Both military and civilian agencies face enormous challenges in this area. Advances in computers, communication, and other areas of information technology make it possible to improve the efficiency of the training process itself. Federal agencies need to take advantage of techniques, software, and specifications being developed for commercial training and for university and college instruction. This is a difficult undertaking since the field is changing rapidly.

Since all federal agencies share similar challenges in this area, the President issued an Executive Memorandum dated January 30, 1998 directing the National Economic Council to develop a plan which will describe how agencies can:

- make full use of best commercial practices when purchasing instructional software;
- work with businesses, universities, and other appropriate entities to foster a competitive market for electronic instruction;
- develop a model technical approach to facilitate electronic instruction building on existing agency efforts, such as the Advanced Distributed Learning Initiative Partnership; and
- develop and support a program of research that will accelerate the development and adoption of new instructional technologies.

Request for Comments on Technology for Federal Training and Education

To support this effort, we are interested in receiving information in the following areas:

Emerging or existing technical specifications and technologies that will enable:

- standardized methods for identifying software components and other tools that can facilitate electronic commerce. These methods can include specifications for ''meta-data'' such as ownership, licensing restrictions, unique identifiers, and other critical information.
- standardized methods for tracking student performance, preference, and records in instructional modules. These methods allow an instructional management system to link a student to a range of instructional modules and provide information to management systems about student performance and learning styles. This information can be used to maintain student records and to improve the instructional materials themselves.
- methods for handling individual questions presented by students. This includes systems for connecting students to databases of ''frequently asked questions,'' methods for creating and maintaining such databases, and systems for connecting students to live instructors who can provide personal answers to questions.
- methods for specifying software components that ensure interoperability. This can include exemplary use of specifications for software objects that can be combined to create simulations or other instructional tools. These specifications could, for example, allow simulated vehicles to be constructed from software objects manufactured by many different vendors.
- tools for creating instructional modules quickly and efficiently from components.
- management systems using components described above. These systems would provide some or all of the following services: methods allowing instructors to develop curricula for individual students, monitor individual student progress, maintain transcripts and certifications, allow easy movement between remedial and advanced instruction, protect student privacy and protect intellectual property, and keep records facilitating financial transactions to holders of intellectual property and others.

(2) Subject areas where there is significant overlap between government and private sector requirements—and proposed partnerships for taking advantage of these commonalities. We are particularly interested in: (a) instructional software that could improve adult basic education (e.g., GED equivalence; adult literacy, English as a Second Language); and (b) subject areas that will help workers compete for jobs in rapidly growing fields (e.g., information technology).

(3) New forms of assessment that are particularly appropriate for technology-mediated instruction.

(4) Methodologies for evaluating the effectiveness of technology-mediated instruction on educational outcomes, costs, and productivity of training and published evaluations of technology-mediated training.

(5) New procurement mechanisms, public-private partnerships, and innovative business models that will encourage private sector investment in the development of highq-uality instructional software and wider deployment and utilization of technology-mediated instruction throughout the economy. Our strategy can only work if all businesses and educational institutions with technology and services capable of serving federal training needs are willing and able to compete for federal business. We are particularly interested in comments that will help federal agencies hold competitions that will attract proposals from creative institutions throughout the economy—even institutions that have had no previous experience in bidding on government contracts. We would like comments on how existing procedures create barriers to bidding on federal contracts and proposals for streamlining the process.

These comments will be used to develop a federal strategy to facilitate the emergence of a vigorous, competitive market in interoperable software products for instruction. Such a market ensures that institutions with training needs—including federal agencies—get high-quality, up-to-date, instruction for their employees at a low cost. It also ensures the widest possible market for creative developers producing products that can be sold into the large markets for instructional software products created by such open markets.

Please provide information and suggestions in these areas useful for developing federal policy that will ensure efficient federal use of information technology based on use of the best practices emerging in competitive commercial markets. This notice is for the purses of developing policy and *is not* a solicitation. Please do not send descriptions of specific products or services.

Dated: June 24, 1998.

Holly Gwin,

Chief of Staff and General Counsel; Office of Science and Technology Policy.

[FR Doc. 98–17502 Filed 6–26–98; 5:03 pm]

BILLING CODE 3170–01–U

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 98–1130]

Third Quarter 1998 Universal Service Contribution Factors Revised and Approved

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Common Carrier Bureau announces approved universal service contribution factors for the third quarter of 1998.

DATES: The third quarter contribution factors were announced in a Public Notice released on June 12, 1998.

ADDRESSES: One original and five copies of all comments responsive to this Public Notice must be sent to Magalie Roman Salas, Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Three copies also should be sent to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, 2100 M Street, N.W., 8th Floor, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Lori Wright, Accounting Policy Division, Common Carrier Bureau, (202) 418–7391.

SUPPLEMENTARY INFORMATION: In this Public Notice, the Common Carrier Bureau (Bureau) revises and approves the final universal service contribution factors for the third quarter of 1998. On May 13, 1998, using information submitted on May 1, 1998 by the Universal Service Administrative Company (USAC), Schools and Libraries Corporation (SLC), and Rural Health Care Corporation (RHCC), the Accounting Policy Division (Division) of the Bureau announced the proposed universal service contribution factors for the third quarter of 1998. The proposed factors were published in the **Federal Register** on May 26, 1998. Pursuant to the Commission's rules, if the Commission had taken no action by June 9, 1998, the proposed third quarter contribution factors would have been deemed approved. On June 8, 1998, the Division extended until 11:59 p.m. on June 12, 1998 the time period during which the Commission could modify the proposed third quarter 1998 universal service contribution factors.

Also on May 13, 1998, the Bureau released a Public Notice seeking comment on whether to reduce the 1998 collection amounts for the schools and libraries and rural health care universal service support mechanisms. In an Order adopted today, the Commission, among other things, adjusts the 1998 collection amounts for the schools and libraries and rural health care universal service support mechanisms. Specifically, the Commission directs USAC to collect only as much as required by demand, but in no event more than $325 million per quarter for the third and fourth quarters of 1998 and the first and second quarters of 1999 to support the schools and libraries universal service support mechanism. The Commission further directs SLC to commit to applicants no more than $1.925 billion for disbursement during 1998 and the first half of 1999. With respect to the rural health care universal service support mechanism, the Commission directs USAC to collect only as much as required by demand, but in no event more than $25 million per quarter for the third and fourth quarters of 1998. The adjustments to the collection amounts for the third quarter of 1998 are reflected in the table below under the ''total program costs'' column. We note that, because the demand for funds exceeds the maximum amount that will be collected for the schools and libraries support mechanism in the third quarter of 1998, the ''total program costs'' for the third quarter (i.e., $325 million) is less than the demand that SLC projected. Because the table lists expenses, positive income flows are denoted with parentheses.

THIRD QUARTER 1998

[In millions of dollars]

Program	Program demand	Administrative expenses	Interest income	Total program costs
Schools and Libraries	690.0	4.4	(0.0)	325.0
Rural Health Care	24.3	1.2	(0.5)	25.0
Subtotal	714.3	5.6	(0.5)	350.0
High Cost	414.1	0.8	(0.7)	414.2
Low Income	125.3	0.4	(1.0)	124.7
Subtotal	539.4	1.2	(1.7)	538.9
Total	1,253.7	6.8	(2.2)	888.9

Based on information contained in the Universal Service Worksheets, FCC Form 457, USAC submitted on May 1, 1998, end-user telecommunications revenues for the 1997 calendar year. On May 14, 1998, USAC submitted revised end-user telecommunications revenues for the 1997 calendar year. Funding bases for the third and fourth quarters are determined by subtracting the revenues reported for January through June 1997 (on the September Worksheet) from the 1997 calendar year revenues reported on the March Worksheet. The amounts are as follows:

Total Interstate, Intrastate, and International End-User Telecommunications Revenues from July 1, 1997—December 31, 1997: $94.066 billion

Total Interstate and International End-User Telecommunications Revenues from July 1, 1997—December 31, 1997: $34.719 billion

To account for uncollectible contributions, we decrease by one percent the revenue estimates listed above. It has come to our attention that several carriers subject to the universal service contribution obligation have failed to meet this obligation. To maintain the integrity of the universal service support mechanisms, pending enforcement of this obligation, we determine that we should account for uncollectible contributions at a rate of one percent. This is consistent with USAC's estimated rate of uncollectible contributions. Additionally, because each quarter is three months long, we

estimate quarterly revenues by dividing by two the six-month revenue estimates.

Based on the revised end-user telecommunications revenues submitted by USAC, SLC, and RHCC, a one-percent reduction in the revenue estimates to account for uncollectible contributions, and consistent with the revised collection amounts for the schools and libraries and rural health care support mechanisms adopted today, the approved contribution factors for the third quarter of 1998 are as follows:

Contribution factor for the schools and libraries and rural health care support mechanisms: Total Program Costs / Contribution Base (Interstate, International, and Intrastate) = $0.350 billion / ($93.125 billion / 2) = 0.0075

Contribution factor for the high cost and low income support mechanisms: Total Program Costs / Contribution Base (Interstate and International) = $0.539 billion / ($34.372 billion / 2) = 0.0314

These factors are the approved third quarter 1998 universal service contribution factors that USAC shall use to calculate third quarter universal service contributions. USAC will bill and collect these contributions on a monthly basis.

For further information, contact Lori Wright, Accounting Policy Division, Common Carrier Bureau, at (202) 418–7400.

Federal Communications Commission.

Lisa S. Gelb,

Chief, Accounting Policy Division, Common Carrier Bureau.

[FR Doc. 98–17486 Filed 6–30–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 3:47 p.m. on Friday, June 26, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the Corporation's supervisory activities, and (2) an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Julie L. Williams (Acting Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: June 29, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–17722 Filed 6–26–98; 3:56 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Title: Management Agreement Between Port of Oakland and Marine Terminals Corporation

Parties: City of Oakland (Board of Port Commissioners) Marine Terminals Corporation

Synopsis: The proposed amendment changes a minimum annual hourly use guarantee of port cranes to a minimum equivalent unit container guarantee and provides for a reduction in the amount of the per lift charge. The term of the agreement continues to run through June 30, 2004.

Title: City of Los Angeles and Matson Terminals, Inc. Marine Terminal Permit No. 776

Parties: City of Los Angeles (Board of Harbor Commissioners) Matson Terminals, Inc.

Synopsis: The proposed amendment increases both the size of the area leased and the amount of the rent required. The term of the agreement continues to run through January 31, 1999.

Title: Cruise Terminal Agreement Among the Port of Palm Beach District, Contessa International Company and Contessa Cruise and Casino, Inc.

Parties: Port of Palm Beach District, Contessa International Company, Contessa Cruise and Casino, Inc.

Synopsis: The proposed agreement provides for the use of Palm Beach's Cruise Terminal Area by Contessa International Company and its agent, Contessa Cruise and Casino, Inc. The term of the agreement runs through June 21, 2004, with the possibility of two 4-year extensions.

Dated: June 25, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–17405 Filed 6–30–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

International Traffic & Logistics, 9327 Tranquil Park Drive, Spring, TX 77379, Al G. Wichterich, Jr., Sole Proprietor.

Dated: June 26, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–17471 Filed 6–30–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank

holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 17, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Patricia McLaurin Morgan, Richard Brand Morgan, Paul Mangum Morgan, all of Lawrenceville, Georgia; to acquire voting shares of Brand Banking Company, Lawrenceville, Georgia.

Board of Governors of the Federal Reserve System, June 25, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17454 Filed 6–30–98; 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 July 27, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. CNY Financial Corporation, Cortland, New York; to become a bank holding company by acquiring Cortland Savings Bank, Cortland, New York.

Board of Governors of the Federal Reserve System, June 25, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17455 Filed 6–30–98; 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 July 27, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to merge with First Evergreen Corporation, Evergreen Park, Illinois, and thereby indirectly acquire First National Bank of Evergreen Park, Evergreen Park, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Banks, Inc., Creve Coeur, Missouri; and its wholly owned subsidiary CCB Bancorp, Inc., Newport Beach, California; to acquire 100 percent of the voting shares of Republic Bank, Torrance, California.

Board of Governors of the Federal Reserve System, June 26, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–17527 Filed 6-30-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. BankBoston Corporation (BKB), Boston, Massachusetts; to acquire Robertson Stephens, Inc., San Francisco, California, and thereby engage in

underwriting and dealing to a limited extent in all types of equity securities, other than ownership interest in open-end investment companies; making, acquiring and servicing loans and other extensions of credit, pursuant to § 225.28(b)(1) of Regulation Y; providing investment and financial advisory services, pursuant to § 225.28(b)(6) of Regulation Y; arranging commercial or industrial real estate equity financing, pursuant to § 225.28(b)(2)(ii) of Regulation Y; underwriting and dealing in obligations of the United States and Canada, general obligations of U.S. States, Canadian provinces, and their political subdivisions, and other obligation in which state member banks may underwrite and deal under 12 U.S.C. 24 and 335, pursuant to § 225.28(b)(8) of Regulation Y; and providing securities brokerage, private placement, and riskless principal services, pursuant to § 225.28(b)(7)(i), (ii), and (iii) of Regulation Y. The proposed activities are currently being conducted, directly or indirectly, by the subject entities with Board approval. (See *Bank of Boston Corp.*, 83 Fed. Res. Bull. 42 (1997) and *Bank America Corp.*, 83 Fed. Res. Bull. 1008 (1997)).

Board of Governors of the Federal Reserve System, June 25, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17453 Filed 6–30–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct; Terry D. Reisine, Ph.D.

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Terry D. Reisine, Ph.D., University of Pennsylvania: Based upon ''The Dean's Proposed Findings of Fact'' and ''Memorandum on Issues Not Fully Addressed in Findings of Fact,'' forwarded to ORI by the University of Pennsylvania, dated October 25, 1996 (Findings and Memorandum), and ORI's oversight review of the evidence provided, ORI finds that Terry D. Reisine, Ph.D., former Professor, Department of Pharmacology, University of Pennsylvania, engaged in scientific misconduct in biomedical research supported by Public Health Service (PHS) grants.

Specifically, ORI finds that the Respondent falsified results related to the measurement of cyclic AMP in cultured, transfected cells by falsely representing in manuscripts and publications the number of experiments conducted, and by falsifying and/or fabricating some of the substantive data presented in those manuscripts and publications. Moreover, ORI finds that the Respondent attempted to falsify data by directing members of his laboratory to construct figures and tables with false values in the preparation of manuscripts.

Dr. Reisine has entered into a Voluntary Exclusion Agreement with ORI. The settlement is not an admission of liability on the part of the Respondent, and Dr. Reisine denies having committed scientific misconduct. Pursuant to the Agreement, Dr. Reisine has agreed to the following:

(1) Respondent agreed to exclude himself voluntarily for a period of three (3) years beginning on June 11, 1998, from any contracting or subcontracting with any agency of the United States Government, and from eligibility for or involvement in nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76 (Debarment Regulations).

(2) Respondent agreed to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on June 11, 1998.

(3) Within 30 days of the effective date of the Agreement, Respondent agreed to submit letters to the following journals requesting correction of the corresponding articles. The corrections are warranted by the following findings of the Findings and Memorandum:

a. The Journal of Biological Chemistry

Kong, H., Raynor, K., Yasuda, K., Moe, S.T., Portoghese, P.S., Bell, G.I., and Reisine, T. ''A single residue, aspartic acid 95, in the gamma opioid receptor specifies selective high affinity agonist binding.'' J. Biol. Chem. 268:23055–23058, 1993.

i. The results in Table 1 are stated in the table legend to be based on four (4) experiments with calculated SEM values and Hill coefficients when, in fact, the majority of the listed compounds were tested only once, and a few tested only twice.

ii. Figure 2 data are stated in the figure legend to be the means of three (3) different experiments when, in fact, most of the results were based on a single experiment.

b. The Journal of Pharmacology and Experimental Therapeutics

Raynor, K., Kong, H., Hines, J., Kong, G., Benevoc, J., Yasuda, K., Bell, G.I., and Reisine, T. ''Molecular mechanisms of agonist-induced desensitization of the cloned mouse kappa opioid receptor.'' J. Pharmacol. Exp. Ther. 270:1381–1386, 1994.

i. The figure legend for Figures 3A, 3C, and 3D claimed that the values shown were the average of three (3) different experiments when, in fact, the results were from only one (1) experiment.

ii. The figure legend for Figure 4B claimed that the values shown were the average of four (4) different experiments when, in fact, the results were from only three (3) experiments.

iii. Figures 3A, 3C, and 3D each show several levels of adenyl cyclase inhibition that do not reflect the actual results obtained in duplicate cyclic AMP assays.

c. Molecular Pharmacology

Reisine, T., Kong, H., Raynor, K., Yano, H., Takeda, J., Yasuda, K., and Bell, G.I. ''Splice variant of the somatostatin receptor 2 subtype, somatostatin receptor 2B, couples to adenylyl cyclase.'' Mol. Pharmacol. 44:1016–1020, 1994.

i. The legend for Figure 3A claims that three (3) experiments were performed when, in fact, only two (2) experiments were performed for the SSTR2B mutants.

ii. The legend for Figure 3B claims that the values presented are the average of two (2) different experiments when, in fact, the inhibition curve shown was based on a single experiment.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Dorothy K. Macfarlane,

Acting Director, Office of Research Integrity.

[FR Doc. 98–17411 Filed 6–30–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 98095]

Enhancement of Local Public Health Departments Participation in Brownfields Decisions and Actions; Notice of Availability of Funds

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program for a pilot activity with a select number of local health departments to demonstrate effective public health

interventions around Brownfields properties.

ATSDR is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

ATSDR is also fully committed to implementing the President's Executive Order 12898 on Environmental Justice to ensure the full representation and participation on all levels, of minority and low-income population groups.

Authority

This program is authorized under Sections 104 (i) (4), (6), (7), (14), and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604 (i)(4), (6), (7), (14), and (15)].

Smoke-Free Workplace

ATSDR strongly encourages all grant and cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applicants will be limited to the official county, city and other local public health agencies of local communities (with the exception of Rhode Island where the State Health Department is the eligible applicant) located in the sixteen (16) Brownfields Showcase Communities as designated by the Environmental Protection Agency (EPA)(62 FR 44274). The Brownfields Showcase Communities are:

1. Portland, Oregon
2. Chicago, Illinois
3. Southeast Florida (Eastward Ho!)
4. Trenton, New Jersey
5. Kansas City, Kansas & Missouri
6. Dallas, Texas
7. Baltimore, Maryland
8. Lowell, Massachusetts
9. Salt Lake City, Utah
10. Seattle/King County, Washington
11. St. Paul, Minnesota
12. Los Angeles, California
13. State of Rhode Island
14. East Palo Alto, California
15. Stamford, Connecticut
16. Glen Cove, New York

Only one application will be accepted from each of the 16 Brownfields Showcase Communities. Each Brownfields Showcase community should coordinate between appropriate county, city and other local public health departments to ensure only one application is received from each showcase community. If more than one application is received from the same showcase community, all applications from that showcase community will be returned as unresponsive. See also Executive Order 12372 referenced later in this announcement.

Availability of Funds

Approximately $350,000 is available in FY 1998 to fund an estimated five to seven awards. The average award is expected to be approximately $60,000, ranging from $50,000 to $70,000. It is expected that the awards will begin on or about September 30, 1998, and will be made for a 12-month budget and project period. There is currently no expectation that projects will be continued for more than one year. Funding estimates may vary and are subject to change.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of ATSDR grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds. The equipment proposed should be appropriate and reasonable for the activities to be conducted. The applicant, as part of the application process, should provide: (1) a justification for the need to acquire the equipment, (2) the description of the equipment, (3) the intended use of the equipment, and (4) the advantages/disadvantages of leasing versus purchase of the equipment.

Background

Brownfields are abandoned, idled or under-utilized industrial and commercial properties where expansion or redevelopment is complicated by real or perceived contamination. The Brownfields Initiative was launched by the Environmental Protection Agency (EPA) to empower States, local governments, and other stakeholders in community redevelopment to work together to assess, clean up, and sustainably reuse Brownfields. In May 1997, Vice President Gore announced a Brownfields National Partnership to bring together the resources of 17 Federal agencies to address local cleanup and reuse issues in a more coordinated manner. ATSDR is among the agencies participating in the partnership. This multi-agency partnership has pledged support to sixteen ''Brownfields Showcase Communities''—models demonstrating the benefits of collaborative activity on Brownfields. The designated Brownfields Showcase Communities are distributed across the country and vary by size, resources, and community type. It is expected that because of their location, Brownfields property redevelopment will disproportionately impact low-income minority communities; therefore, the President's Executive Order 12898 on Environmental Justice should be fully implemented.

While the full magnitude of the Brownfields problem is not known, it has been estimated that there are as many as 600,000 Brownfields properties in the United States and its territories, affecting virtually every community in the Nation. Whereas environmental clean up is a building block to economic redevelopment, public health should be the cornerstone. Public health concerns must go hand-in-hand with restoration of contaminated properties and bringing life and economic vitality back to a community.

ATSDR's role in the National Brownfields Initiative is to develop strategies and methods to protect the health and quality of life of people living around brownfields properties by focusing on public health issues related to previous environmental degradation.

Purpose

The purpose of this project is to assist the local public health departments (LHDs) with jurisdiction in the 16 Brownfields Showcase Communities to develop and implement strategies to ensure that efforts to remediate and redevelop properties do not present environmental public health hazards to current and future community residents. It is expected that this program will stimulate LHDs to enlist the cooperation of local governing officials, community-based organizations, and State governments to work together in a timely manner to ensure that public health issues are considered in the earliest phases of remediation and

redevelopment of the Brownfields properties.

ATSDR and local stakeholders have identified the need to develop public health science, build environmental health capacity in State and local health departments, assure principles of environmental justice, and implement communication and empowerment strategies to enhance community support for and participation in the Brownfields Redevelopment Initiative. A goal for ATSDR is to assist in empowering local community stakeholders by providing them with the tools to monitor the health of Brownfields workers and community residents during assessment, clean up, and redevelopment of Brownfields. It is expected that by using this comprehensive public health approach to Brownfields redevelopment, the health and quality of life of persons working or living on or near Brownfields properties will be adequately protected. The incorporation of the President's Executive Order 12898 on Environmental Justice is essential for successful Brownfields redevelopment. Therefore, recipients will be expected to fully implement the Executive Order. In addition, it is expected that this strategy will encourage open lines of communication among local stakeholders, particularly local officials and residents living on or near Brownfields properties and promote the development of working partnerships with these groups. This program highlights the 16 Brownfields Showcase Communities as examples of how public health activities can be implemented. The examples will serve as models which can be generalized to other communities throughout the Nation.

Program Requirements

ATSDR will assist or work jointly with the recipients in conducting the activities of this cooperative agreement program. The application should be presented in a manner that demonstrates the applicant's ability to address the health issues in a collaborative manner with local community stakeholders and with ATSDR in adherence with the Executive Order on Environmental Justice to ensure the full participation of minority and low-income population groups. Recipient and ATSDR activities are listed below:

A. Recipient Activities

The recipient will have primary responsibility for:

1. Obtaining an inventory of Brownfields properties in the local community and analyzing existing contaminant data.

2. In collaboration with ATSDR, State health departments, and EPA, using environmental data, community health concerns, medical and other public health data, and other relevant information to evaluate Brownfields properties for property-specific environmental public health issues.

3. Assuring relevant health data, including perceived or real affected community concerns is collected and used in decision-making.

4. Developing Brownfields Showcase Public Health teams composed of representatives from the LHD and local stakeholders, e.g., particularly those from affected Brownfields communities to include minorities and low-income population groups in accordance with Executive Order 12898. Co-host with local stakeholders on community workshops on the types of health considerations necessary for land use planning. Work with the local Brownfields Public Health Teams to provide information on sensitive populations to be input into the local development agency's Geographical Information System.

5. Assuring public health concerns are integrated into the Brownfields Showcase decision-making related to assessment, clean up, and redevelopment.

B. ATSDR Activities

ATSDR will have primary responsibilities for:

1. Collaborating with and assisting the recipient in the collection of environmental data, medical and other public health data and other relevant information to evaluate Brownfields properties for property-specific public health issues.

2. Convening a Public Health Empowerment Workshop for recipients to discuss mechanisms for community-based organizations and local health departments to implement public health strategies in their communities.

3. Evaluating recommendations prepared by the recipient and providing timely advice and assistance to further the objectives of this program.

4. Providing the recipient with an exposure assessment algorithm (EAA) for addressing the public health impacts on Brownfields properties. The EAA is an environmental differential diagnosis that local public health professionals may use to help focus in on the possible risks from Brownfields properties.

5. Ensuring compliance with the requirements for peer and technical reviews as identified below under ''Technical Reporting Requirements''.

Technical Reporting Requirements

A final financial status and performance report is required 90 days after the end of the 12-month budget and project period. All reports are to be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305–2209. The final performance report must include the following for the program, function, or activity involved: (1) a comparison of actual accomplishments to the goals established for the period; (2) the reasons for slippage if established goals are not met; and (3) other pertinent information.

Peer and Technical Reviews

A. CERCLA, as amended by SARA, Section 104(i)(13), and [42 U.S.C. 9604(i)] requires all studies and results of research (other than public health assessments) that ATSDR carries out or funds in whole or in part will be peer reviewed by ATSDR. The ATSDR peer review process for final reports requires that:

1. Studies must be reported or adopted only after appropriate peer review.

2. Studies shall be peer reviewed within a period of 60 days to the maximum extent practical.

3. Studies shall be reviewed by no fewer than three or more than seven reviewers who (1) are selected by the Administrator, ATSDR; (2) are disinterested Scientific experts; (3) have a reputation for scientific objectivity; and (4) who lack institutional ties with any person involved in the conduct of the study or research under review.

B. ATSDR encourages the rapid reporting and interpretation of laboratory results and references back to individual participants. However, if summary tables or distribution of laboratory results are prepared using the study data, this is considered a preliminary finding and will require ATSDR technical and peer review prior to release.

C. When, in the opinion of the investigator(s), a public health concern exists requiring the release of summary study statistics prior to the completion of the study, the investigator must obtain concurrence from ATSDR prior to releasing the summary statistics. A request for ATSDR concurrence for the release of information must be documented in a letter to ATSDR and should outline the public health concern, and recommended response,

and the draft document proposed for release by the investigator. ATSDR will provide a technical review and peer review within ten (10) working days to the maximum extent possible. Summary statistics may be released only after peer review. The release of summary statistics does not preclude the requirement for a final report.

D. By statute, the reporting of preliminary studies and preliminary research results to the public is not acceptable without prior review by ATSDR. This includes manuscripts prepared for publication, presentations at scientific meetings, and reporting of preliminary findings to the community or the media.

E. The final report for every study should include a detailed description of the problem, hypothesis, methods, results, conclusions, and recommendations that constitute a complete performance record of the study.

F. ATSDR is responsible for the technical and peer review of draft final reports of any study that it funds prior to the submission of the final report. This will allow for the recipient to incorporate all technical and peer review comments into the final report. Responses to all ATSDR required technical and peer review comments should be summarized in a letter to ATSDR. This letter should also include the investigator's response to each comment and a rationale for those responses. Based upon the comments of the technical and peer reviewers, modifications in the study report may result. The modified study report should accompany the letter to ATSDR.

G. ATSDR will make available assistance to investigators in formatting and copy editing draft final reports, should the investigator request this assistance. Editing will be conducted by ATSDR staff and an edited copy of the draft final report will be supplied to the investigator for review and concurrence. Editing will occur DURING the conduct of the peer review. It is requested that the report be furnished in WordPerfect 5.1 on a disk with the hard copy double-spaced, with clearly numbered pages, unbound and unstapled, and printed on one side only. All appendices, including maps and reproduced forms used in this study, should be furnished to ATSDR by the investigator.

H. Following the steps outlined above, a final report of all studies and results of research carried out or supported by ATSDR must be submitted to the Procurement and Grants Office with a copy furnished to ATSDR.

I. If assistance in printing the final report is needed, the Principal Investigator can submit a hard copy of the final report to the Procurement and Grants Office with a copy furnished to ATSDR.

Application Content

In a narrative format, the applicant should include discussion of areas listed under the EVALUATION CRITERIA section of this announcement as they relate to the proposed program. Because these criteria will serve as the basis for evaluation of the application, omissions or incomplete information may affect the rating of the application. Although this program does not require in-kind or matching funds, the applicant should describe any in-kind support in the formal application. For example, if the in-kind support includes personnel, the applicant should provide the qualifying experience of the personnel and clearly state the type of activity to be performed.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Proposed Program (60 percent)

A. Applicants ability to address the following:

1. Identification of relevant Brownfields properties in the area including but not limited to those identified in the Brownfields Showcase award.

2. Identification of all local Brownfields stakeholder groups, particularly minority and low-income local residents from affected communities. These groups should be developed into Brownfields Showcase Public Health Teams with public health making authority.

3. Demonstrate how they will effectively use local health data in Brownfields public health evaluation and assurance.

4. Demonstrate how they will effectively implement the Executive Order on Environmental Justice, by demonstrating working partnerships with community-based organizations of targeted populations in Brownfields communities.

5. Describe how they will evaluate and sustain the public health activities after the project period.

2. Program Evaluation (20 percent)

The adequacy of the proposal relative to the extent to which evaluation plan includes measures of program outcome (e.g., effect on participant's knowledge, attitudes, skills, and behaviors).

3. Applicant Capability (20 percent)

a. Applicant's basic knowledge/experience required to perform the applicant's responsibilities in the project;

b. Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities.

4. Program Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

The application is subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372, which sets up a system for State and local government review of proposed Federal assistance applications. The applicant should contact their Single Point of Contact (SPOC) as early as possible to alert them to the prospective application and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305–2209, no later than 45 days after the application deadline date. The requirement for a 60-day State Process period has been waived under governing regulations 45 CFR 100. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The catalog of Federal Assistance Number is 93.161.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Cost Recovery

CERCLA, as amended by SARA, provides for the recovery of costs incurred for response actions at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including direct cost, as appropriate for the site. The recipient would also maintain documentation that describes the site-specific response actions taken with respect to the site, e.g., contracts, work assignments, progress reports, and other documents that describe the work performed at a site. The recipient will retain the documents and records to support these financial transactions and documentation of work performed, for possible use in a cost recovery case, for a minimum of ten years after submission of a final financial status report, unless there is litigation, claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

C. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party. The written agreement shall at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning technical review (ATSDR selected reviewers), release of data, ownership of data, and the arrangement for copyright when publications, data or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity.

2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, non-exclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes.

3. State that whenever any work subject to this copyright policy may be developed in the course of a grant be a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work.

4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to ATSDR under the cooperative agreement. The written agreement shall, therefore, retain sufficient rights and control to the grantee to enable it to fulfill this responsibility and accountability.

Application Submission and Deadline

The original and two copies of application PHS Form 5161–1 (OMB Number 0937–0189) should be submitted to Ron Van Duyne, Grants Management Officer, Attn: Patrick A. Smith, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 225 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305-2209, on or before August 10, 1998. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

A. Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Applications: Applications which do not meet the criteria in A.1. or 2. above are considered late applications. Late applications will not be considered.

Where to Obtain Additional Information

To receive additional written information call 1–888–GRANTS4. You will be asked to leave your name, address, and phone number and will need to refer to ATSDR Announcement Number 98095. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Patrick A. Smith, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–13, Atlanta, GA 30305–2209, telephone (404) 842–6803, Internet: phs3@cdc.gov.

Programmatic technical assistance may be obtained from Rueben C. Warren, DDS, MPH, DrPH, Associate Administrator for Urban Affairs, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, N.E., Mail Stop E–29, Atlanta, GA 30333 or by calling (404) 639–5060, Internet: rcw4@cdc.gov.

Please refer to announcement number 98095 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is: http://www.cdc.gov.

Dated: June 25, 1998.

Georgi Jones,

Director, Office of Policy and External Affairs Agency for Toxic Substances and Disease Registry.

[FR Doc. 98–17459 Filed 6–30–98; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0525]

Draft Guidance for Industry: ''Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMs);'' Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until July 31, 1998, the comment period for

a notice announcing the availability of a draft guidance for industry entitled ''Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMs)'' that appeared in the **Federal Register** of January 5, 1998 (63 FR 236). FDA is taking this action because of the complexity and importance of the issues raised by this draft guidance and to allow interested parties additional time to prepare and submit comments.

DATES: Written comments by July 31, 1998. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance for industry ''Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMs)'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Regarding prescription drugs: Laurie B. Burke, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828, or via Internet at burkel@cder.fda.gov;

Regarding prescription biological products: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–200), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3028, or via Internet at stifano@cber.fda.gov;

Regarding restricted medical devices: Byron L. Tart, Center for Devices and Radiological Health (HFZ–302), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4639, or via Internet at bxt@cdrh.fda.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1998 (63 FR 236), FDA published a notice announcing the availability of a draft guidance for industry entitled ''Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMs).'' The draft guidance is intended to assist sponsors of regulated medical products (human drugs, biologics, and medical devices) by describing circumstances in which they may be held responsible for promotional activities performed by a healthcare organization/PBM subsidiary or by a nonsubsidiary healthcare organization/PBM that violate the Federal Food, Drug, and Cosmetic Act and regulations issued thereunder. The draft guidance also reminds medical product sponsors of their responsibility to submit or, in the case of some devices, maintain historical files of promotional labeling and advertising. Following the review of all comments received between January 5 and July 31, 1998, the agency intends to solicit public comment on a new draft guidance document.

Interested persons may, on or before July 31, 1998, submit to the Dockets Management Branch (address above) written comments on this subject. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 25, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–17413 Filed 6-30-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA), (60 FR 56605 as amended November 6, 1995, as last amended at 63 FR 33379–80 dated June 18, 1998). This notice reflects the changes in the Bureau of Primary Health Care (BPHC), Division of National Health Service Corps.

I. Under Division of National Health Service Corps (RC5) delete the current functional statement in it's entirety and replace with the following:

Provides (1) strategic planning and overall policy guidance, and program oversight to the National Health Service Corps (NHSC); (2) initiates national program and policy changes, including regulatory and statutory amendments, as necessary, to ensure NHSC consistency with evolving national health care policy; (3) supports the NHSC National Advisory Council (NAC), which advises the Secretary, DHHS, on national health care policy, particularly as it affects health manpower issues and the NHSC; (4) works with the Office of the Administrator and the Office of the Secretary to ensure that the NAC membership are nationally recognized leaders in national health care policy issues, and in their respective primary health care disciplines; (5) provides national NHSC leadership, integration and coordination with BPHC, HRSA and other Departmental programs serving or impacting the Nation's underserved communities and populations; (6) works directly with Bureau, Agency and intra-Agency, Departmental, and inter-Departmental organizations and staffs, as appropriate, on national policies and strategies affecting underserved populations and development and distribution of primary care clinical personnel; (7) coordinates with the Bureau of Health Professions regarding health professionals education and training, as appropriate; (8) speaks for NHSC with national, regional, State, and local public and private health care professional associations, universities and other health professions training institutions and other groups whose public policy interests relate to primary health care manpower and access issues; (9) articulates NHSC policy interests and issues to a variety of national forums, including universities, foundations, think tanks, and other organizations whose interests in primary and other health care public policy issues have potential for affecting the NHSC; (10) provides policy guidance and support to HRSA field offices, and to State and Regional Primary Care Offices and Primary Care Associations; and (11) coordinates NHSC and Bureau policy on primary and other health care manpower issues, and works with a wide variety of national, regional, State and local constituencies in ensuring their effective implementation.

II. Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation. I hereby ratify and affirm all actions taken by any DHHS officials which involved the exercise of these authorities prior to the effective date of this delegation.

This reorganization is effective upon date of signature.

Dated: June 19, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–17472 Filed 6–30–98; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–843092

Applicants: San Antonio Zoological Gardens and Aquarium, San Antonio. TX.

The applicant requests a permit to import 4.4 live Japanese Giant Salamanders (*Andrias japonicus*), bred in captivity by the Asa Zoological Park, Hiroshima, Japan, for the purpose of enhancement of the species through captive breeding and exhibition.

PRT–841435

Applicant: Panamerican Marketing, San Antonio, TX.

The applicant requests a permit to export 1.2 live ring-tailed lemurs (*Lemur catta*) to Promotora Zoofari, Morelos, Mexico for the purpose of enhancement of the propagation and survival of the species through captive breeding.

PRT–831689

Applicant: University of Wisconsin, Dept. of Zoology, Madison, WI.

The applicant requests a permit to import blood and feather samples taken from captive-held and wild caught Andean condors (Vultur gryphus) in South America, for the purpose of scientific research.

PRT–844311

Applicant: Geraldine Mr. Stallman, Salem, WI.

The applicant requests a permit to import the sport-hunted trophy of one male bonetebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Writtend data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice. U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104): FAX: (703/358–2281).

Dated: June 26, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–17524 Filed 6–30–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Issue 2 Draft Comprehensive Conservation Plans and Associated Environmental Assessments for 2 National Wildlife Refuges in the Southwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared draft Comprehensive Conservation Plans (CCP) and associated Environmental Assessments for the Bitter Lake National Wildlife Refuge, Roswell, New Mexico, and San Andres National Wildlife Refuge, Las Cruces, New Mexico pursuant to the National Wildlife Refuge System Improvement Act of 1997, and National Environmental Policy Act of 1969, and its implementing regulations.

DATES: The Service will be open to written comments through July 30, 1998.

ADDRESSES: Copies may be obtained by writing to: Mr. Tom Baca, Natural Resource Planner, Division of Refuge, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306. Comments should be submitted to: Lou Bridges, Project Coordinator, Research Management Consultants, Inc., 1746 Cole Blvd., Bldg. 21, Suite 300, Golden, CO 80401.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process has assisted in the development of the draft documents. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service intends to consider comments and advice generated in response to the draft documents prior to the preparation of a final CCP. The Service is furnishing this notice in compliance with Service CCP policy: (1) To advise other agencies and the public of the availability of the draft documents, and (2) to obtain suggestions and advice for consideration in preparation of final documents.

The Service anticipates that final CCP documents and any associated NEPA documents will be available by September 15, 1998.

Dated: June 26, 1998.

Renne Lohefner,

Acting Regional Director.

[FR Doc. 98–17460 Filed 6–30–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the White River Amphitheatre, Muckleshoot Indian Reservation, King County, WA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent and public scoping notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs, with the cooperation of the U.S. Army Corps of Engineers, U.S. Environmental

Protection Agency, Muckleshoot Indian Tribe, and Washington Department of Transportation, intends to gather the information necessary and prepare an Environmental Impact Statement (EIS) for the proposed taking into federal trust of land for the construction of the Muckleshoot Indian Tribe's White River Amphitheatre. A description of the proposed project, location, and environmental considerations to be addressed in the EIS are provided in the Supplementary Information section. This notice also announces a public meeting to be held on the proposal and the preparation of the EIS.

This notice is published in accordance with Section 1501.7 of the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8. The purpose of this notice is to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS.

DATES: Comments must be received on or before July 24, 1998. The public scoping meeting will be held on July 15, 1998. We will consider all comments sent during the comment period, or submitted at the public scoping meeting.

ADDRESSES: Comments should be addressed to Stanley Speaks, Area Director, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169. The public scoping meeting will be held at Green River Community College, Lindbloom Student Center, 12401 S.E. 320th Street, Auburn, Washington, from 7:00 PM to 9:00 PM.

FOR FURTHER INFORMATION CONTACT: June Boynton, Area Environmental Coordinator, 503–231–6749.

SUPPLEMENTARY INFORMATION: The Muckleshoot Indian Tribe intends to develop an amphitheatre on tribal property within the boundaries of the Muckleshoot Indian Reservation adjacent to Highway 164, about seven miles southeast of the City of Auburn in King County, Washington. The White River Amphitheatre Project will consist of a 20,000-seat amphitheatre plus parking for approximately 5900 cars, all on a 90-acre site. The amphitheatre will include fixed and lawn seating, a main stage, concessions, cafes, and various plantings surrounding the seating. The amphitheatre will be used for about 30 to 40 concert events per year (which will generate the greatest attendance) and community and cultural events such as Native American pow wows, dance performances, and children's events.

The Tribe has recently requested that the BIA acquire the land upon which the amphitheatre is being built and hold that land in trust status on behalf of the Tribe. As a consequence, BIA must decide either to acquire the land or not acquire the land. With respect to possible BIA action, only the action and no action alternatives have so far been identified. Additionally, a federal district court ordered BIA to prepare an EIS with respect to the amphitheatre in *United States ex rel. Citizens for Safety & Environment* v. *Bill Graham Enterprises, Inc.*, No. C97–1775C (W.D.Wash.) (order issued April 17, 1998). It has not been decided whether to appeal that decision.

The EIS will address the project's effects on the environment. Issues identified include:

- Traffic—concerns that traffic jams will result and that safety and emergency services will be compromised.
- Noise—concerns that the sounds from the concerts will travel offsite and adversely affect surrounding residents, wildlife, and livestock.
- Crime—concern that crimes, including alcohol and drug related ones, will increase in the vicinity of the amphitheatre.
- Water quality—the primary concern is that runoff from the site will not be adequately controlled or cleaned up to prevent impact to the White River.
- Wetlands—are wetland impacts minimized, accounted for, or mitigated?
- Wildlife—are there unacceptable impacts on fish and wildlife and their habitats, including threatened or endangered species?
- Slope stability—will the project affect the stability of the bluff above the White River and thereby affect other resources?
- Sewage disposal—how will sewage from the site be handled?
- Air quality—will traffic at the amphitheatre generate enough carbon monoxide to violate regional standards?
- Land use—how will the project affect the rural character of the surrounding lands?
- Socioeconomics—how will the project affect local businesses and property values?

The Bureau of Indian Affairs recognizes that the Corps of Engineers has issued a public notice for a proposed wetland fill permit for the amphitheatre, has held a public hearing to receive comments, and has accepted numerous written comments concerning the Amphitheatre project. The issues and concerns received by the Corps of Engineers in comments on the project will be included as part of the scoping for this EIS.

Dated: June 26, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–17528 Filed 6–30–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–985–0777–66]

Notice of Intent To Conduct a Planning Review, Concerning Off Road Vehicle Use in the Weston Hills Area, North of Gillette, Wyoming, and Request for Public Participation

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SUMMARY: The Bureau of Land Management (BLM), Buffalo Resource Area, invites the public to identify issues and concerns to be addressed in a review of vehicular use management decisions for BLM administered public lands in the Weston Hills Area.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain further information, or request to be placed on the Buffalo mailing list by contacting Neil Schiche, Project Coordinator, at the Buffalo Resource Area Office, Bureau of Land Management, 1425 Fort Street, Buffalo, Wyoming 82834, 307–684–1100.

SUPPLEMENTARY INFORMATION: A planning review of the Weston Hills area is needed to evaluate existing BLM off road vehicle use and vehicular use management decisions for the BLM administered public lands in the area. The purposes of the planning review are to determine: (1) Whether the existing vehicular use management decisions for the BLM administered public lands in the Weston Hills area provide for an appropriate level of resource protection, (2) whether other management actions and alternatives that may be considered would be in conformance with existing decisions in the Buffalo Resource Management Plan (RMP), and (3) whether or not it will be necessary to amend the Buffalo RMP.

The National Environmental Policy Act environmental analysis and documentation process will be used in conducting the planning review and in making the above determinations for the planning review area. An Environmental Assessment will be

prepared to document the review and its results.

The planning review will include opportunities for public participation. The public will be invited to a meeting(s) to discuss: (1) problems, conflicts, concerns, and planning issues in the review area, and (2) potential management options to consider. A public meeting is scheduled for June 30, 1998, at 7 p.m., in the Campbell County Public Library, 2101 4J Road, Gillette, Wyoming.

If other public meetings, open houses or similar events are needed, they will be announced through other notices, mailings, or news releases. The planning review results, and any need to amend the Buffalo RMP and to provide a protest period on the amendment will be announced in the same manner.

Dated: June 25, 1998.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 98–17458 Filed 6–30–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–066–1430–00; CACA 35556]

Public Land Order No. 7343; Withdrawal of Public Land for the Pechanga Historic Site; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 19.83 acres of public land from surface entry, mining, mineral leasing, and mineral materials sales for a period of 50 years on behalf of the Bureau of Land Management to protect the Pechanga Historic Site.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825; 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, 30 U.S.C. Ch. 2 (1994), mineral leasing laws, 30 U.S.C. 181 *et seq.* (1994), and mineral material sale laws, 30 U. S. C. 601–604 (1994), to protect the Pechanga Historic Site:

San Bernardino Meridian

T. 5 S., R. 4 W.,
Sec. 22, lot 5.

The area described contains 19.83 acres in Riverside County.

2. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: June 18, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–17466 Filed 6–30–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP7–0182; OR–19080]

Public Land Order No. 7347; Revocation of Executive Order Dated August 2, 1916; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order in its entirety as to the remaining 24.38 acres withdrawn for Bureau of Land Management Powersite Reserve No. 537. The lands are no longer needed for the purpose for which they were withdrawn. This action will remove restrictions on 6.25 acres of public lands that were subject to the provisions of Section 24 of the Federal Power Act. These lands will remain closed to the agricultural land laws due to an overlapping withdrawal. The remaining 18.13 acres have been conveyed out of Federal ownership with a reservation of all minerals to the United States.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Bliesner, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6157.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated August 2, 1916, which established Powersite Reserve No. 537, is hereby revoked in its entirety:

Willamette Meridian

(a) Public Lands

T. 2 S., R. 7 E.,
Sec. 33, lots 11, 21, 22, 27, and 28.

(b) Non-Federal Surface

T. 2 S., R. 7 E.,
Sec. 33, lots 1, 4, 6, 7, 12, 14, 15, 18, 20, 23, 24, 26, 30, 31, 32, and 34.

The areas described aggregate 24.38 acres in Clackamas County.

2. The lands described in paragraph 1(b) have been conveyed out of Federal ownership with a reservation of all minerals to the United States.

3. The lands described in paragraph 1(a) have been open to operation of the public land laws, subject to the provisions of Section 24 of the Federal Power Act of June 10, 1920, and will be relieved of such restrictions at 8:30 a.m. on July 1, 1998. These lands have been and will remain open to mining and mineral leasing.

4. The lands described in paragraph 1(a) remain withdrawn from all forms of appropriation under the agricultural land laws, 43 U.S.C. Ch. 9; 25 U.S.C. 331 (1994), by Public Land Order No. 5490, as modified by Public Land Order Nos. 5542 and 7043.

Dated: June 18, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–17463 Filed 6–30–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP8–0002; OR–19578 (WA)]

Public Land Order No. 7344; Partial Revocation of Executive Order dated July 2, 1910; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order insofar as it affects 1,147.26 acres of National Forest System lands withdrawn for Bureau of Land Management Powersite Reserve No. 73. The lands are no longer needed for the purpose for which they were withdrawn. The lands will remain closed to surface entry, mining, and mineral leasing due to another overlapping withdrawal.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6189.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated July 2, 1910, which established Powersite Reserve No. 73, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

Gifford Pinchot National Forest

T. 9 N., R. 4 E.,
Sec. 2, SW¼;
Sec. 5, SE¼SW¼ and S½SE¼;
Sec. 7, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 8, N½ and N½SW¼.

The areas described aggregate 1,147.26 acres in Cowlitz County.

2. The lands are included in the Mt. St. Helens National Volcanic Monument and will remain closed to surface entry, mining, and mineral leasing.

Dated: June 18, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–17465 Filed 6–30–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CA–018–1220–00]

Recreation Management Restrictions; California, South Yuba River, Hoyt's Crossing; Supplementary Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Final Supplementary Rules.

SUMMARY: The Bureau of Land management establishes supplementary rules for the management of recreational uses on public lands adjacent to the South Yuba River at Hoyt's Crossing. This action is necessary to limit adverse impacts to public lands while longterm planning for the South Yuba River is underway. The California State Parks and the County of Nevada urges the BLM to enact restrictions in the Hoyt's Crossing area to reduce ongoing problems. These Supplementary Rules will protect the resources and the recreational experience until planning is completed.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION: Questions on the Final Rules can be directed to Deane Swickard, Field Manager, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630, 916–985–4474.

SUPPLEMENTARY INFORMATION: These Supplementary Rules were published as Proposed Supplementary Rules in the **Federal Register**, April 20, 1998, 63 FR 19508–19509. No changes were made from the Proposed Supplementary Rules to the Final Supplementary Rules. Written comments were received from one organization and two individuals. No new information was revealed and the comments suggested ''status quo'' as an alternative plan.

One comment suggested that the BLM wait until a Management Plan is completed before rules are established. The Nevada County Department of Health requested the area be closed to camping due to health hazards associated with the improper disposal of human waste. A long range plan is needed but an immediate action is necessary to deal with existing health hazards and other recourse issues.

Two comments states there are too few camping areas along the South Yuba River due to topography. BLM agrees that the terrain limits the available locations suitable for camping. Two comments states that the ban on camping on State Park property has reinforced the need for camping opportunities at Hoyt's Crossing. the California State Parks must manage their land within mandates set forth by the California legislature. The BLM must manage public land within mandates set forth by Congress in the Federal Land Policy and Management Act plus other Federal laws. While it is the BLM's policy to allow and encourage dispersed camping in most locations, our responsibilities require us to impose restrictions in some areas. Hoyt's Crossing is one of these areas. BLM has a signed cooperative agreement with California State Parks and Recreation to manage the Federal lands within the South Yuba Recreation Area in harmony with the goals of the State Park.

Two comments stated that there is too much area dedicated to day use (State Park and BLM). BLM feels that the vast majority of recreational demand is for day use activities.

Two comments said that regulations degrade the recreational experience. True, a regulation will degrade a person's experience if that person wishes to participate in an activity prohibited by regulation.

Two comments asked where people would camp now. In the area of the South Yuba River, there are the South Yuba Campground, Malokoff Diggins State Park, and other dispersed areas around Illinois, Purdon, and Edwards Crossing.

Two comments asked if BLM was forcing campers off the river. See above paragraph.

Two comments asked if there would be additional restrictions along the South Yuba River. It is impossible to predict at this time.

Two comments objected to the penalty amounts of violating the Supplementary Rules. These penalties are set by Congress and not by BLM.

One comment questioned if the BLM was targeting nude sunbathing and gay individuals. Nothings in these rules directly affect these specific groups.

One comment stated that the South Yuba River floods every year and cleans this area. The BLM's position is not to allow trash, abandoned property, or human feces to be swept away by the water.

Two comments suggested that there is no need for any protection at Hoyt's Crossing. BLM must provide some degree of protection to all public lands. The amount of protection would be directly related to other factors, such as, amount of use, plant life, animal life, soils, water quality, and Federal mandates.

One comment suggested that we leave Hoyt's Crossing ''as is''. Explained previously.

One comment stated that BLM should construct campsites, fire rings, and toilets. BLM will not construct facilities until the long range planning is completed.

One comment asked what gave BLM the right to decide these issues. BLM is directed by Congress through the Federal Land Policy and Management Act of 1976 and other Federal laws to make land management decisions.

One comment suggested that the boundary between BLM, State Parks, and private property is impossible to locate. BLM plans to mark boundaries.

One comment said any signs would destroy the recreational experience. BLM will install the minimum signs needed to inform the public.

One comment said the BLM is making criminals out of citizens because of bureaucratic rules. Congress has decided that there will be sanctions for willfully violating laws and regulations.

One comment suggested there were too many rules already. BLM is mandated to enforce existing laws and regulations and enact new regulations to provide for proper land management.

One comment said these rules were restricting access to public lands. Access to Public Land remains intact.

Supplementary Rules

BLM adopts the following supplementary rules which will be

applicable on public land within sections 28 and 34, Township 17 North, Range 8 East of the Mt. Diablo meridian. BLM's authority to for issuing supplementary rules is contained in 43 CFR 8365.1–6.

(a) No person shall camp. The term camp is defined as the use, construction, or taking possession of public lands using tents, shacks, lean-tos, tarps, vehicles, huts, blankets, or sleeping bags.

(b) No person shall build, attend, maintain, or use a campfire. The term campfire is defined as a controlled fire occurring out of doors used for cooking, branding, personal warmth, lighting, ceremonial, or esthetic purposes.

(c) No person shall possess or consume alcoholic beverages. The term alcoholic beverages is defined as beer, wine, distilled spirits, or any other beverage defined as such by California law.

(d) No person shall possess any bottle or container made of glass.

(e) Any person who fails to comply with these Supplementary Rules will be subject to a fine of up to 100,000 dollars and/or imprisoned not to exceed 12 months. These penalties are specified by 43 U.S.C. 303 and 18 U.S.C. 3623. Federal, state, and local law enforcement personnel and emergency service personnel, while performing official duties, are exempt from these Supplementary Rules.

D.K. Swickard,

Field Manager.

[FR Doc. 98–16993 Filed 6–30–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Mineral Management Service

Outer Continental Shelf, Beaufort Sea, Oil and Gas Lease Sale 170

AGENCY: Mineral Management Service, Interior.

ACTION: Final Notice of Sale.

1. *Authority.* The Mineral Management Service (MMS) is issuing this Notice of Sale under the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR Part 256).

A ''Sale Notice Package,'' containing this Notice and several supporting and essential documents referenced in the Notice, is available from the MMS Alaska OCS Regional Office Public Information Unit (see paragraph 15 of this Notice).

2. *Filing of Bids.* Bidders must comply with the following requirements. Times specified hereafter are local Anchorage, Alaska, times unless otherwise indicated.

(a) *Filing of Bids.* Sealed bids must be received by the Regional Director (RD), Alaska OCS Region, MMS, 949 East 36th Avenue, Third Floor, Anchorage, Alaska 99508–4302, during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., Tuesday, August 4, 1998. If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m. Tuesday, August 4, 1998.

(b) *Bid Opening Time.* Bid Opening Time will be 9 a.m., Wednesday, August 5, 1998, at the Wilda Marston Theatre, Z. J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska. The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 63 FR 14473 on March 25, 1998.

(c) *Natural Disasters.* In the event of an earthquake or other natural disaster, the MMS Alaska OCS Regional Office may extend the bid submission deadline. Bidders may call (907) 271–6010 for information about the possible extension of the bid submission deadline due to such an event.

3. *Method of Bidding.* The MMS has adopted the optional use of EFT for payment of the ⅕th bonus bid. Sale 170 will be the first Alaska OCS Region sale to use these procedures; however, the process has been successfully implemented for recent Gulf of Mexico Region sales.

(a) *Submission of Bids.* For each tract bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 170, not to be opened until 9 a.m., Wednesday, August 5, 1998.'' The total amount bid must be a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the Sale Notice Package (see paragraph 15 of this Notice).

Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Alaska OCS Region Office. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of give decimal places, e.g., 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(b) *Submission of the ⅕th Bonus Payment.* Bidders will have the option of submitting the ⅕th cash bonus in cash or by cashier's check, bank draft, or certified check with the bid; or by using electronic funds transfer (EFT) procedures. Detailed instructions for submitting the ⅕th bonus payment by EFT are contained in the document ''Instructions for Making EFT ⅕th Bonus Payments'' included in the Sale Notice Package.

Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the ⅕th bonus on all high bids. A statement to this effect will be included on each bid (see the document ''Bid Form and Envelope'' contained in the Sale Notice Package).

4. *Minimum Bid, Yearly Rental, and Royalty System.* The following minimum bid, yearly rental, and royalty system apply to this sale:

(a) *Minimum Bid.* Bidders must submit a cash bonus in the amount of $62.00 or more per hectare or fraction thereof with all bids submitted at this sale.

(b) *Yearly Rental.* All leases awarded will provide for a yearly rental payment of $13.00 per hectare or fraction thereof until initial production is obtained.

(c) *Royalty System.* After initial production is obtained, leases will require a minimum royalty of $13.00 per hectare or fraction thereof. Leases issued as a result of Sale 170 will have a fixed royalty rate of 12½ percent.

5. *Equal Opportunity.* The certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) must be on file in the MMS Alaska OCS Regional Office, prior to lease award, (see paragraph (u) of the document ''Information to Lessees for Sale 170'' contained in the Sale Notice Package).

6. *Bid Opening.* Bid opening will begin at the bid opening time stated in paragraph 2(b). The opening of the bids is for the sole purpose of publicly

announcing bids received, and no bids will be accepted or rejected at that time.

7. *Deposit of Payment.* Any payments made in accordance with paragraph 3(b) above will be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Tracts.* The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for the tract.

9. *Acceptance, Rejection, or Return of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, an no lease for any tract will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice, including the documents contained in the associated Sale Notice Package (see paragraphs 1–15 of this Notice), and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus as specified in paragraph 4 above. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, tracts will be evaluated in accordance with established MMS bid adequacy procedures. A copy of the current procedures (''Summary of Procedures for Determining Bid Adequacy at Offshore Oil and Gas Lease Sales: Effective August 1997, with Sale 168'') is available from the MMS Alaska OCS Regional Office Public Information Unit (see paragraph 15 of this Notice). This document incorporates changes announced in a **Federal Register** Notice at 62 FR 37589, dated July 14, 1997.

10. *Successful Bidders.* The following requirements apply to successful bidders in this sale:

(a) *Lease Issuance.* The MMS will require each person who has submitted a bid accepted by the authorized officer to execute copies of the lease (Form MMS–2005 (March 1986) as amended), pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued by EFT in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended.

(b) *Certification Regarding Nonprocurement Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.* Each person involved as a bidder in a successful high bid must have on file, in the MMS Alaska OCS Regional Office, a currently valid certification that the person is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR, Part 12, Subpart D.

A copy of the certification form is contained in the Sale Notice Package.

11. *Official Protraction Diagrams.* The following Officials Protraction Diagrams, which may be purchased from the MMS Alaska OCS Regional Office Public Information Unit (see the document ''Information to Lessees'' contained in the Sale Notice Package), depict the blocks offered for lease in this sale:

(a) Outer Continental Shelf Official Protraction Diagrams. these diagrams sell for $2.00 each.

NR 06–03, Beechey Point, revised September 30, 1997

NR 06–04, Flaxman Island, revised September 30, 1997

12. *Description of the Areas Offered for Bids.*

(a) *Areas Available for Leasing.* The locations of blocks offered for lease in Sale 170 are shown on Locator Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact area in hectares, is included in the document:

''Description of Blocks Included in Sale 170''

The Sale Notice Package contains this document.

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have initial terms of 10 years. Copies of the lease form are available from the MMS Alaska OCS Regional Office Public Information Unit (see paragraph 15 of this Notice).

(b) The text of the lease stipulations is contained in the document ''Lease Stipulations for Oil and Gas Lease Sale 170.'' This document is contained in the Sale Notice Package. The stipulations will become a part of leases on applicable blocks resulting from Sale 170.

14. *Information to Lessees.* The Sale Notice Package contains a document titled ''Information to Lessees for Sale 170.'' The Information to Lessees items provide information on various matters of interest to lessees and potential bidders.

15. *Sale Notice Package.* The Sale Notice Package, and individual documents contained therein, are available from the Public Information Unit, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302, either in writing or by telephone at (907) 271–6070 or (800) 764–2627. For additional information, contact the Regional Supervisor for Leasing and Environment, in writing at the above address or by telephone at (907) 271–6045.

The documents referenced below and contained in the Sale Notice Package contain information essential for bidders, and bidders are charged with the knowledge contained therein. Included in the Package are:

Cover sheet.

Notice of Sale for Sale 170, Beaufort Sea.

Least Stipulations for Oil and Gas Lease Sale 170.

Information to Lessees for Sale 170.

Description of Blocks Included in Sale 170.

Debarment Certification Form.

Bid Form and Envelope.

Bidder Contact Form.

Instructions for Making EFT ⅕ Bonus Payment.

Certain documents may be viewed and downloaded from the MMS World Wide Web site at http://www.mms.gov/alaska. The MMS also maintains a 24-hour Fax-on-Demand Service at (202) 219–1703.

Dated: June 24, 1998.

Cynthia Quarterman,

Director, Minerals Management Service.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 98–17403 Filed 6–30–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Request for Proposal to Schedule, Escort, Issue Launch Permits to, and Collect Fees From Paddle Craft Users on the Colorado River, Within the Security Zone of Hoover Dam.

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of solicitation for proposals from qualified parties to schedule reservations, escort, issue launch permits to, and collect fees from paddle crafts users.

SUMMARY: Reclamation is soliciting proposals from qualified parties to reserve and schedule 2 paddle craft launches daily, and escort a maximum of 15 users at each launch-time to a launch area on the Colorado River, in a secured area surrounding Hoover Dam.

ADDRESSES: Interested parties should request copies of the Request for Proposal (RFP) from Mr. Jeff Reavis, Outdoor Recreation Planner, Environmental Compliance and Realty Group, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293–8428 or FAX (702) 293–8146.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Reavis at (702) 293–8428.

SUPPLEMENTARY INFORMATION: Reclamation's Lower Colorado Dams Facilities office is supervised by the Area Manager, Mr. Timothy J. Ulrich, and encompasses projects administered by Hoover, Davis and Parker Dams and appurtenant works.

A Concession Agreement will be negotiated with the Concessionaire selected under this RFP. The Area Manager is the authorizing official in this action. Prior to execution of an agreement by the Area Manager, the agreement will be reviewed for legal sufficiency and endorsement, then signed by the prospective new Concessionaire.

Dated: June 11, 1998.

John A. Johnson,

Acting Director, Resource Management Office.

[FR Doc. 98–17422 Filed 6–30–98; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 753–TA–34]

Extruded Rubber Threat From Malaysia

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 753(a) of the Tariff Act of 1930 (19 U.S.C. 1675b(a)) (the Act), that an industry in the United States is not likely to be materially injured by reason of imports of extruded rubber thread from Malaysia, provided for in subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States, if the countervailing duty order concerning such extruded rubber thread is revoked.

Background

The Commission initiated this investigation effective December 15, 1997, following receipt of a request filed with the Commission by North American, Fall River, MA, on June 30, 1995, requesting the continuation of the existing countervailing duty order, issued August 25, 1992, concerning extruded rubber thread from Malaysia. Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 24, 1997 (62 FR 67406). The hearing was held in Washington, DC, on May 5, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 25, 1998. The views of the Commission are contained in USITC Publication 3112 (June 1998), entitled ''Extruded Rubber Thread From Malaysia: Investigation No. 753–TA–34.''

Issued: June 26, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–17537 Filed 6–30–98; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on June 8, 1998, a proposed Consent Decree in *United States* v. *Ford Motor Company*, Civil Action No. 98–01432(RCL), was lodged with the United States District Court for the District of Columbia.

The United States has asserted, in a civil complaint under the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, that certain 1997 Econoline vans had defeat devices or otherwise violated the reporting requirements of Section 203 of the Clean Air Act. In addition, the United States asserted that 1.7 million Escorts from model years 1991 through 1995 violated the reporting requirements of Section 203 of the Clean Air Act.

Under the proposed Consent Decree, Ford has agreed to recall the 1997 Econolines and deactivate the defeat device. Ford also agreed to offset the excess NO_X emitted as a result of these violations by purchasing and retiring 2,500 tons of NO_X credits. Finally, Ford will pay a civil penalty of $2.5 million dollars, and will implement Supplemental Environmental Projects valued at $1.5 million in the form of alternative fuel vehicles and fueling stations, which Ford will provide to at least two airports, at no cost to the airport facilities, for use in transporting passengers from off-site parking lots to the terminals.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ford Motor Company*, Civil Action No. 98–01432(RCL), D.J. Ref. 90–5–2–1–2195.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Columbia, Judiciary Center Bldg., 555 Fourth St., NW., Washington, DC 20001; at the Environmental Protection Agency Library, Reference Desk, Room 2904, 401 M Street, SW., Washington, DC 20460; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the 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 in the amount of $7.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–17499 Filed 6–30–98; 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 consent decree in *United States* v. *Reynolds,* Civ. A. No 96–0014–C, was lodged on June 12, 1998 with the United States District Court for the Western District of Virginia. The consent decree resolves the claims of the United States under Section 106(b), 107(a), and 107(c) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), for reimbursement of response costs incurred at the Singleton Drum Site in Castleton, Rappahannock County, Virginia, as well as civil penalties for failure to comply with a Unilateral Administrative Order issued by EPA. The consent decree obligates Settling Defendants to pay $277,500 in reimbursement of response costs incurred by EPA in responding to contamination at the Site, and civil penalties. Of this amount, approximately $144,000 will be paid in full reimbursement of EPA's response costs 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, D.C. 20530, and should refer to *United States* v. *Reynolds,* DOJ Ref. ı90–11–2–1072.

The consent decree may be examined at the office of the United States Attorney, 616 Chestnut Street, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, DC 20005 (202) 624–0892. A copy of the 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 $4.75 (25 cents per page reproduction cost), payable to the Consent Decree library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental & Natural Resources Division.

[FR Doc. 98–17500 Filed 6–30–98; 8:45 am]

BILLING CODE 4110–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 98–1497]

Proposed Final Judgment and Competitive Impact Statement; United States v. Aluminum Company of America, et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States v. Aluminum of America, et. al.,* Civil No. 1:98CV01497. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b)-(h).

On June 15, 1998, the United States filed a Complaint seeking to enjoin a transaction in which Aluminum Company of America (''Alcoa'') would acquire Alumax, Inc. (''Alumax''). Alcoa and Alumax are the two largest of three producers of aluminum cast plate (''cast plate'') in the world. Cast plate is used for applications that require precise dimensions and flatness, such as jigs, fixtures, and numerous tooling, mold, machinery, and equipment applications. Alcoa's proposed acquisition of Alumax would have combined under single ownership almost 90% of the cast plate manufacturing business in the world. The Complaint alleged that the proposed acquisition would substantially lessen competition in the manufacture and sale of cast plate worldwide in violation of Section 7 of the Clayton Act, 15 U.S.C. section 18.

The proposal Final Judgment, filed at the same time as the Complaint, orders Alcoa to sell its cast plate division to a purchaser who has the capability to compete effectively in the manufacture and sale of cast plate. The proposed Final Judgment also requires Alcoa to abide by the Hold Separate Stipulation and Order, which requires Alcoa to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, Alcoa's cast plate division will be held separate and apart from, and operated independently of, any of Alcoa's other assets and businesses. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone: (202) 307–6351).

Copies of the Complaint, Hold Separate Stipulation and Order, Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

Stipulation and Order

It is hereby *Stipulated* by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claims of hardship of difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein. Respectfully submitted.

For Plaintiff United States of America;

Nina B. Hale,

Washington Bar #18776

Andrew K. Rosa,

Hawaii Bar #6366, Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Washington, DC 20004, (202) 307–6316, (202) 307–0886.

Dated: June 15, 1998.

For Defendant Aluminum Company of America:

Mark Leddy,

DC Bar #404833,

David I. Gelfand,

DC Bar #416596,

Steven J. Kaiser,

DC Bar #454251,

Cleary, Gottlieb, Steen & Hamilton,

2000 Pennsylvania Avenue, N.W., Washington, DC 20006 (202) 974–1500.

For Defendant Alumax Inc.:

Robert P. Wolf,

Virginia Bar #1299,

Alumax Inc.,

3424 Peachtree Road, N.E., Suite 2100, Atlanta, GA 30326, (404) 846–4651.

Order

It is *So ordered*, this _____ day of _____, 1998.

_____

United States District Court Judge

Hold Separate Stipulation and Order

It is hereby *Stipulated* by and between the undersigned parties, subject to approval and entry by the Court, that:

I

Definitions

As used in this Hold Separate Stipulation and Order:

A. *Alcoa* means defendant Aluminum Company of America, a Pennsylvania Corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. *Alumax* means Alumax Inc., a Delaware Corporation with its headquarters in Atlanta Georgia, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. *Alcoa Cast Plate Division* means all assets included within the cast plate operation of Alcoa's Aerospace and Commercial Rolled Products Division as of the date hereof, including:

1. all tangible assets, including the cast plate manufacturing facility located at 1551 Alcoa Avenue, Vernon, California 90058 (''Vernon facility'') and the portion of the real property on which the Vernon facility is situated that is reasonably necessary for operation of the Vernon cast plate plant; any facilities used for research and development activities; Vernon offices; cast plate-related manufacturing assets including capital equipment, vehicles, interests, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, and other tangible property or improvements used in the cast plate operation; all licenses, permits and authorizations issued by any governmental organization relating to the cast plate operation; all contracts, agreements, leases, commitments and understandings pertaining to the cast plate operation; supply agreements; all customer lists, contracts, accounts, and credit records; and other records maintained by Alcoa in connection with the cast plate operation;

2. all intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, and service names contain the name ''Alcoa''), technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Alcoa provides to its own employees, customers, suppliers, agents or licensees; and

3. all research data concerning historic and current research and development efforts relating to the cast plate operation, including designs of experiments, and the results of unsuccessful designs and experiments.

D. *Cast Plate* means an aluminum plate product manufactured by casting or by sawing cast slab purchased from an external source, ranging in gauges from ¼ inch to 30 inches, that is used for various tooling, industrial and mold plate applications, and that is manufactured by the Alcoa Cast Plate Division.

II

Objectives

The Final Judgment filed in this case is meant to ensure Alcoa's prompt divestiture of the Alcoa Cast Plate Division for the purpose of maintaining a viable competitor in the manufacture and sale of Cast Plate to remedy the effects that the United States alleges would otherwise result from Alcoa's proposed acquisition of Alumax.

This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Alcoa Cast Plate Division which is being divested be maintained as an independent, economically viable, ongoing business concern, and that

competition is maintained during the pendency of the divestiture.

III

Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Alcoa shall preserve, maintain, and operate the Alcoa Cast Plate Division as an independent competitor with management, research, development, production, sales and operations held entirely separate, distinct and apart from those of Alcoa. Alcoa shall not coordinate the manufacture, marketing or sale of products from Alcoa Cast Plate Division's business with the Cast Plate business that Alcoa will own as a result of the acquisition of Alumax. Within twenty (20) calendar days of the filing of the Complaint in this matter, Alcoa will inform plaintiff of the steps taken to comply with this provision.

B. Alcoa shall take all steps necessary to ensure that the Alcoa Cast Plate Division will be maintained and operated as an independent, ongoing, economically viable and active competitor in Cast Plate manufacture and sale; that the management of the Alcoa Cast Plate Division will not be influenced by Alcoa, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Alcoa Cast Plate Division will be kept separate and apart from the operations of Alcoa. Alcoa's influence over the Alcoa Cast Plate Division shall be limited to that necessary to carry out Alcoa's obligations under this Order and the Final Judgment. Alcoa may receive historical aggregate financial information (excluding capacity or pricing information) relating to the Alcoa Cast Plate Division to the extent necessary to allow Alcoa to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports.

C. Alcoa shall use all reasonable efforts to maintain Cast Plate manufacturing at the Alcoa Cast Plate Division, and shall maintain at current or previously approved levels, whichever are higher, internal research and developing funding, promotional, advertising, sales, technical assistance, marketing and merchandising support for the Alcoa Cast Plate Division.

D. Alcoa shall provide and maintain sufficient working capital to maintain the Alcoa Cast Plate Division as an economically viable, ongoing business.

E. Alcoa shall provide and maintain sufficient lines and sources of credit to maintain the Alcoa Cast Plate Division as an economically viable, ongoing business.

F. Alcoa shall take all steps necessary to ensure that the Vernon facility is fully maintained in operable condition at no lower than its current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Alcoa Cast Plate Division.

G. Alcoa shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any assets of the Alcoa Cast Plate Division, including intangible assets that relate to the permits described in Section II of the Final Judgment.

H. Alcoa shall maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, incomes, profit and loss of the Alcoa Cast Plate Division.

I. Until such time as the Alcoa Cast Plate Division is divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Agreement, Alcoa shall not hire and defendant shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any Alcoa employees who on the date of the signing of this Agreement (i) work in the Alcoa Cast Plate Division, or (ii) are members of management referenced in Section III(J) of this Order unless such individual has a written offer of employment from a third party for a like position.

J. Until such time as the Alcoa Cast Plate Division is divested, the assets to be divested shall be managed by John Hogarth. John Hogarth shall have complete managerial responsibility for the Alcoa Cast Plate Division, subject to the provisions of this Order and the Final Judgment. In the event that John Hogarth is unable to perform his duties, Alcoa shall appoint, subject to plaintiff's approval, a replacement acceptable to plaintiff within ten (10) working days. Should Alcoa fail to appoint a replacement acceptable to plaintiff within ten (10) working days, plaintiff shall appoint a replacement.

K. Alcoa shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

L. This Hold Separate Stipulation and Order shall remain in effect until the divestiture required by the Final Judgment is complete, or until further Order of the Court.

Respectfully submitted,

For Plaintiff, United States of America:

Nina B. Hale,

Washington Bar #18776,

Andrew K. Rosa,

Hawaii Bar #6366, Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Washington, DC 20004, (202) 307–6316, (202) 307–0886.

Dated: June 15th, 1998.

For Defendant, Aluminum Company of America:

Mark Leddy,

DC Bar #404833,

David I. Gelfand,

DC Bar #416596,

Steven J. Kaiser,

DC Bar #454251,

Cleary, Gottlieb, Steen & Hamilton,

2000 Pennsylvania Avenue, N.W., Washington, DC 20006, (202) 974–1500.

For Defendant Alumax Inc.:

Robert P. Wolf,

Virginia Bar #1299, Alumax Inc., 3424 Peachtree Road, N.E., Suite 2100, Atlanta, GA 30326, (404) 846–4651.

Order

It is So Ordered, this _____ day of _____, 1998.

_____

United States District Judge

Final Judgment

Whereas, plaintiff, the United States of America (''United States''), filed its complaint in this action on June 15, 1998, and plaintiff and defendants, Aluminum Company of America (''Alcoa'') and Alumax Inc. (''Alumax''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Alcoa Cast Plate Division to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to plaintiff that the divestiture ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty

as grounds for asking the Court to modify any of the divestiture or contract provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and decreed* as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. *Alcoa* means defendant Aluminum Company of America, a Pennsylvania Corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. *Alumax* means Alumax Inc., a Delaware Corporation with its headquarters in Atlanta, Georgia, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. *Alcoa Cast Plate Division* means all assets included within the cast plate operation of Alcoa's Aerospace and Commercial Rolled Products Division as of the date hereof, including:

1. all tangible assets, including the cast plate manufacturing facility located at 1551 Alcoa Avenue, Vernon, California 90058 (''Vernon facility'') and the portion of the real property on which the Vernon facility is situated that is reasonably necessary for operation of the Vernon cast plate plant: any facilities used for research and development activities; Vernon offices; cast plate-related manufacturing assets including capital equipment, vehicles, interests, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, and other tangible property or improvements used in the cast plate operation; all licenses, permits and authorizations issued by any governmental organization relating to the cast plate operation; all contracts, agreements, leases, commitments and understandings pertaining to the cast plate operation; supply agreements; all customer lists, contracts, accounts, and credit records, and other records maintained by Alcoa in connection with the cast plate operation;

2. all intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, and service names contain the name ''Alcoa''), technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Alcoa provides to its own employees, customers, suppliers, agents or licensees; and

3. all research data concerning historic and current research and development efforts relating to the cast plate operation, including designs of experiments, and the results of unsuccessful designs and experiments.

D. ''Cast Plate'' means an aluminum plate product manufactured by casting or by sawing cast slab purchased from an external source, ranging in gauges from ¼ to 30 inches, that is used for various tooling, industrial and mold plate applications, and that is manufactured by the Alcoa Cast Plate Division.

III

Applicability

A. The provisions of this Final Judgment apply to Alcoa and Alumax, their successor and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concern or participation with any of them who shall have receive actual notice of this Final Judgment by personal service or otherwise.

B. Alcoa shall require, as a condition of the sale or other disposition of all or substantially all of the assets involving Cast Plate, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

Divestiture of Assets

A. Alcoa is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Alcoa Cast Plate Division as an ongoing business to a purchaser acceptable to the United States in its sole discretion. With respect to the intangible assets described in Section II(C)(2) of this Final Judgment, the divestiture required hereunder shall be accomplished by entering into a perpetual, nonexclusive license (or licenses, as the case may be) with the purchaser, transferable to any future purchaser of the Vernon facility, to use, in manufacturing cast plate at the Vernon facility, all such intangible assets, wherever located, that have been used in the manufacture of cast plate at the Vernon facility.

B. Alcoa shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture by an additional period of time not to exceed thirty (30) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment, Alcoa promptly shall make known, by usual and customary means, the availability of the Alcoa Cast Plate Division described in this Final Judgment. Alcoa shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Alcoa shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Alcoa Cast Plate Division customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Alcoa shall make available such information to the plaintiff at the same time that such information is made available to any other person.

D. Alcoa shall not interfere with any negotiations by any purchaser to employ any Alcoa employee who works at, or whose principal responsibility is, the Cast Plate business.

E. Alcoa shall permit prospective purchasers of the Alcoa Cast Plate Division to have reasonable access to personnel and to make such inspection of Alcoa Casts Plate's Vernon facility; assess to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Alcoa shall warrant to the purchaser of the Alcoa Cast Plate

Division that the Alcoa Cast Plate Division will be operational on the date of sale.

G. Alcoa shall not take any action, direct or indirect, that will impede in any way the operation of the Alcoa Cast Plate Division.

H. Alcoa shall warrant to the purchaser of the Alcoa Cast Plate Division that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Alcoa Cast Plate Division and that Alcoa will not undertake, directly or indirectly, following the divestiture of the Alcoa Cast Plate Division, any challenges to the environmental, zoning, or other permits pertaining to the operation of the Alcoa Cast Plate Division.

I. Alcoa shall not be permitted to locate any of its operations at the Alcoa Cast Plate Division's Vernon facility.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Alcoa Cast Plate Division, operated in place pursuant to the Hold Separate Stipulation and Order, and be accomplished by selling or otherwise conveying the Alcoa Cast Plate Division to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Alcoa Cast Plate Division can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the manufacture of Cast Plate. The divestiture, whether pursuant to Section IV of Section V of this Final Judgment, shall be made to purchaser for whom it is demonstrated to the United State's sole satisfaction that: (1) the purchaser has the capability and intent of competing effectively in the manufacture and sale of Cast Plate; (2) the purchaser has or soon will have the managerial, operational, and financial capability to compete effectively in the manufacture and sale of Cast Plate; and (3) none of the terms of any agreement between the purchaser and Alcoa gives Alcoa the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively.

V

Appointment of Trustee

A. In the event that Alcoa has not divested the Alcoa Cast Plate Division within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Alcoa Cast Plate Division.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Alcoa Cast Plate Division. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Alcoa any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States in its sole discretion and shall have such other powers as this Court shall deem appropriate. Alcoa shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Alcoa must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Alcoa, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Alcoa and the trust shall then be terminated. The compensation of such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Alcoa shall use it best efforts to assist the trustee in accomplishing the required divestiture, including its best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorney, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Alcoa shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Alcoa shall permit bona fide prospective acquirers of the Alcoa Cast Plate division to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the business to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI

Notification

Within two (2) business days following execution of a definitive agreement contingent upon compliance with the terms of this Final Judgment to effect, in whole or in part, any proposed divestiture pursuant to Sections IV and V of this Final Judgment, Alcoa or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify Alcoa. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, the United States, in its sole discretion, may request for Alcoa, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Alcoa and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the plaintiff has been provided the additional information requested from Alcoa, the proposed purchaser, or any third party, whichever is later, the United States shall provide written notice to Alcoa and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Alcoa and the trustee that it does not object, then the divestiture may be consummated, subject only to Alcoa's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Alcoa under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Affidavitts

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Alcoa shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the business to be divested,and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include description of the efforts that Alcoa has taken to solicit a buyer for the Alcoa Cast Plate Division and to provide required information to prospective purchasers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Alcoa shall deliver to plaintiff an affidavit which describes in detail all actions Alcoa has taken and all steps Alcoa has implemented on an on-going basis to preserve the Alcoa Cast Plate Division pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Alcoa's efforts to maintain and operate the Alcoa Cast Plate Division as an active competitor, maintain the management, staffing, research and development activities, sales, marketing, and pricing of the Alcoa Cast Plate Division, and maintain the Vernon facility in operable condition at current capacity configurations. Alcoa shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in Alcoa's earlier affidavits(s) filed pursuant to Section VII(B) within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Alcoa shall preserve all records of all efforts made to preserve the business to be divested and effect the divestiture.

VIII

Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, Alcoa shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Alcoa Cast Plate Division.

IX

Financing

Alcoa is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

X

Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment and the Hold Separate Stipulation and Order.

C. No information nor any documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the materials in any such information or documents for

which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedures, and defendants marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then plaintiff shall give ten (10 days notice to defendants prior to divulging such material in any legal proceeding (other than grand jury proceeding) to which defendants are not a party.

CI

Retention of Jurisdiction

Jurisidiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII

Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 15, 1998, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Aluminum Company of America (''Alcoa'') of the aluminum cast plate (''cast plate'') manufacturing business of Alumax Inc. (''Alumax'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Alcoa and Alumax are the two largest producers of aluminum cast plate in the world, and are each other's most significant competitor. They compete vigorously to lower the costs of producing and selling the best quality cast plate at the lowest prices, and to provide the best technological, marketing, and customer support services. There is only one other producer, Alpase, and it is much smaller and not nearly as significant. Alcoa and Alumax have proposed a transaction that will leave the already highly concentrated aluminum cast plate business with one overwhelmingly dominant firm—Alcoa—owning almost 90% of the cast plate manufacturing business in the world. Worldwide sales of cast plate in 1997 were $73,884,000.

The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Alcoa from acquiring Alumax.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Alcoa to complete its acquisition of Alumax, but require a divestiture that will preserve competition in the relevant market. This settlement consists of a Stipulation and Order, Hold Separate Stipulation and Order, and a proposed Final Judgment.

The proposed Final Judgment orders Alcoa to divest, within one hundred and eighty (180) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later the Alcoa Cast Plate Division (as defined in the Final Judgment) to an acquirer acceptable to the Antitrust Division of the Department of Justice (''DOJ''). ''Alcoa Cast Plate Division'' means all assets included within the cast plate operation of Alcoa's Aerospace and Commercial Rolled Products Division, including all tangible and intangible assets, and all research data concerning historic and current research and development efforts relating to the cast plate operation.

Until such divestiture is completed, the terms of the Hold Separate Stipulation and Order entered into by the parties apply to ensure that the Alcoa Cast Plate Division shall be maintained as an independent competitor from Alcoa.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of The Events Giving Rise to The Alleged Violation

A. The Defendants and the Proposed Transaction

Alcoa is a Pennsylvania corporation, with its principal offices located in Pittsburgh, Pennsylvania. Alcoa is the world's largest integrated aluminum company, engaging in all phases of the aluminum business—from the mining and processing of bauxite to the production of primary aluminum and fabrication of products. In 1997, Alcoa had revenues of over $13 billion. Alcoa produces cast plate at a facility located in Vernon, California. Alcoa's 1997 sales of cast plate in the United States were $17,871,528.

Alumax is a Delaware corporation, headquartered in Atlanta, Georgia. In 1997, Alumax reported total sales of about $3 billion. Its Mill Products Division produces cast plate, among other products, in Lancaster, Pennsylvania. Alumax's sales of cast plate in the United States were $38,991,628.

On March 8, 1998, Alcoa and Alumax entered into an agreement under which Alcoa would acquire Alumax. This transaction, which would increase concentration in the already highly concentrated cast plate market, precipitated the government's suit.

B. Cast Plate Market

Cast plate is a flat aluminum product, ranging from eight to twelve feet long, three to five feet wide and anywhere from one-quarter inch to thirty inches thick. Cast plate is produced by pouring molten aluminum onto a conveyor belt in a shape slightly thicker than what it ultimately desired. After cooling, the shape is milled to achieve its final thickness and shape. Cast plate has metallurgic characteristics that make it uniquely suited for certain applications. The casting process, which involves little or no pressing of the plate, produces aluminum that is free from stresses that can cause warping. The resulting cast metal shape is stable enough for applications that required precise dimensions and flatness, such as jigs, fixtures, and numerous tooling, mold, machinery and equipment applications. Cast plate is used to make machinery and equipment that manufactures end products with extremely narrow tolerances. Cast plate must be stress-free, stable, and flat, because stress-induced warping, instability, and unevenness would cause movement in the machinery and

equipment made of cast plate, which in turn would cause the end products manufactured on that machinery and equipment to be out of tolerance.

Other products are not realistic substitutes for cast plate to which customers could switch in the event of a small, but significant and non-transitory price increase. Rolled tooling plate is not a substitute because the rolled metal shape can warp. Furthermore, it is not possible to produce rolled plate as thick as cast plate can be made. Depending on the thickness of the shape, rolled plate can also be significantly more expensive than cast plate.

Alcoa and Alumax are the two strongest and most significant producers of cast plate in the world, representing almost 90% of 1997 sales. Alpease, the third competitor, is not as significant as either Alcoa or Alumax. Aggressive competition by Alcoa and Alumax has given customers lower prices and improved quality for cast plate products.

Successful entry into the manufacture and sale of cast plate is difficult, time-consuming and costly. To build an efficient cast plate facility would cost in excess of $25 million, and would require as long as four years from the time of site selection to production of commercial quantities of cast plate. A new entrant into the cast plate business must submit its product to customers for qualification before the entrant will be accepted as a supplier. A new entrant must establish a reputation for good quality product and for reliability in fulfilling customer orders. There are no other domestic or foreign firms whose entry or expansion would be likely, timely, or sufficient to thwart an anticompetitive price increase.

C. Harm to Competition as a Consequence of the Acquisition

The proposed acquisition would likely lessen competition in the manufacture and sale of cast plate. If Alcoa acquired the cast plate business of Alumax, it would control almost 90% of the cast plate business in the world and likely would increase prices, reduce quality, and decrease production of cast plate. Entry by a new company would not be timely, likely, or sufficient to prevent harm to competition.

The Compliant alleges that the transaction would likely have the following effects, among others; actual and potential competition between Alcoa and Alumax in the cast plate market will be eliminated; competition generally in the sale and manufacture of cast plate worldwide would be lessened substantially; and prices for cast plate would increase.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition of Alumax by Alcoa.

The proposed Final Judgment provides that Alcoa must divest, within on hundred and eighty (180) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, the Alcoa Cast Plate Division to an acquirer acceptable to the DOJ. If defendants fail to divest the Alcoa Cast Plate Division, a trustee (selected by DOJ) will be appointed.

The Final Judgment provides that Alcoa will pay all costs and expenses of the trustee. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Divestiture of the Alcoa Cast Plate Division preserves competition because it will restore the cast plate market to a structure that existed prior to the acquisition and will preserve the existence of a independent competitor. Divestiture will keep at least three producers of cast plate in the market, which will preserve and encourage ongoing competition in the production and sale of cast plate.

IV. Remedies Available to Potential Private Litigants

Seciton 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three time the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comment regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of the dated of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response to the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20004.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Alcoa and Alumax.

The United States is satisfied that the divestiture of the described assets specified in the proposed Final Judgment will encourage viable competition in the production and sale of cast plate. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in this market. The divestiture of the Cast Plate Division will restore the cast plate market to a structure that existed prior to the acquisition and will preserve the existence of an independent competitor.

VII. Standard of Review under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments IN antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other consideration bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific inquiry from the violations set forth in the complaInt including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go on trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[1] Rather

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its response to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas 61,508, at 71,980 (W.D. Mo. 1977)

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.) *cert denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995), Precedent requires that

[t]he balancing of competing social and political interest affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainly of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability.''[A] proposed decree must be approved even if its falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).''[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America:

Date: June 18, 1998.

Respectfully submitted,

Nina B. Hale,
Washington Bar # 18776,
Andrew K. Rosa,
Hawaii Bar # 6366,
Michele Cano,
Jade Alice Eaton.
Trial Attorneys,
U.S. Department of Justice,
Antitrust Division,
325 Seventh Street, NW,
Suite 500,
Washington, DC 20004,
202–307–0892,
202–307–2441 (Facsimile).

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendants in this matter in the manner and on the date set forth below:

By the first class mail, postage prepaid:

D. Stuart Meiklejohn,
Sullivan & Cromwell,
125 Broad Street, 28th Floor,
New York, NY 10004.
David I. Gelfand, Cleary, Gottlieb, Steen & Hamilton,
2000 Pennsylvania Avenue, NW.,
Washington, DC 20006.

Dated: June 18, 1998.

Andrew K. Rosa,
Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, D.C. 20530, (202) 307–0886, (202) 616–2441 (Fax).

[FR Doc. 98–17504 Filed 6–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; Application for Individual Manufacturing Quota for Basic Class of Controlled Substance; Extension of a Currently Approved Collection.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 7, 1998 in volume 63, page 17017, allowed for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public

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[1] 119 Cong. Rec. 24598 (1973), *See also United States* v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975), A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bethtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463, *United States* v. *National Broadcasting Co.* 449 F. Supp. 1127, 1143, (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom, *Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette*, 406 F. Supp, at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp, 619, 622 (W.D. Ky. 1985).

comment until July 31, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department of Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of the information collection:

1. *Type of Information Collection:* Extension of currently approved collection.

2. *Title of the Form/Collection:* Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance.

3. *Agency form number:* DEA Form 189, if any, and the applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit.

Title 21, Section 1303.22 of the Code of Federal Regulations requires that any person who is registered to manufacture any basic class of controlled substance listed in Schedule I or II and who desires to manufacture a quantity of such class shall apply on DEA Form 189 for a manufacturing quota for such quantity of such class.

5. *An estimate of the total estimated number of respondents and the amount of time estimated for an average respondent to respond:* 27 respondents at approximately 10 responses per year at .5 hour per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 135 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: June 24, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–17397 Filed 6–30–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Job Training Partnership Act (JTPA), Title IV–D, Demonstration Program: Women in Apprenticeship and Nontraditional Occupations

AGENCY: Women's Bureau, Department of Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA 98–04).

SUMMARY: All information required to submit a proposal is contained in this announcement. Applicants for grant funds should read this notice in its entirety and respond as directed. Grant proposals that are not completed as directed will be judged nonresponsive and will not be evaluated.

The Women's Bureau (WB), U.S. Department of Labor (DOL) announces the fifth (5) year of the Solicitation for Grant Applications (SGAs) first authorized by the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act under its grant provision to Community-Based Organizations (CBOs) to deliver Technical Assistance (TA) to private sector Employers and Labor Unions (E/LUs) to prepare them to increase the recruiting, training, promotion, and retention of women in apprenticeship and nontraditional occupations (A/NTOs) in their workplaces. WANTO is a competitive grant program funded through the Job Training Partnership Act (JTPA) Title IV-D. While the Women's Bureau has responsibility for implementing the competitive grant process, the WANTO Act is jointly administered by the Department of Labor's Bureau of Apprenticeship and Training (BAT)/Employment and Training Administration (ETA) and the Women's Bureau (WB).

The Department expects to make up to eight (8) WANTO awards to experienced, private nonprofit CBOs from the funds allocated for FY 1998. With the fifth year of WANTO grants, the Department will give priority consideration to proposals for technical assistance that leverage WANTO funds in Federally designated Empowerment Zones (EZ) and Enterprise Communities (EC) in both rural and urban areas. (See Appendix A for a listing of Urban EZ/EC cities and Appendix B for a listing of Rural EZ/EC areas and contacts.) The Department expects WANTO funded CBOs to assist employers and labor unions to make commitments to increase the participation of EZ/EC area women who are returning to work after welfare and related long-term work disruptions. The DOL is particularly concerned with obtaining the commitment of employers and labor unions who have jobs/careers in information technology, manufacturing, and *apprenticeship* in skilled construction building trades. Employers and labor unions will be encouraged to assist returning women to enter and remain in apprenticeship training and other nontraditional employment in these industries by (1) providing them with information on the realities of work and the company's promotion and employee development practices, (2) creating a firm-specific individual development plan, (3) providing for firm-specific skill/job development to promote job advancement, and (4) providing for support services utilizing both firm and community resource networks. CBOs should note well that WANTO training is for employer or labor union firm/company-specific (demand) and is not to increase the general store (supply) of trained workers in apprenticeship and nontraditional occupations. Finally, each proposal MUST include a specific defined internal program evaluation design.

In this time of economic prosperity and skill shortage, it is clear that CBOs'

technical assistance can convince employers and labor unions of the advantage of training and support services to develop their own skilled, stable, and competitive work force. It is equally clear that advances in high technology has moved the U.S. economy from the smokestack industrial age to the information age. Advances in high-tech and microelectronics have spurred the restructuring manufacturing industry and given rise to a variety of computer-based jobs/careers in service sector industries—e.g., public utilities, transportation, finance, real estate, business, professional and personal services, as well as the rise of the information technology industry. Such industries can provide the stable year-round jobs women returning to work need to begin building a self-sufficient future with good wages and benefits. Nonetheless, *apprenticeship* in the skilled building trades and highway construction can provide important career opportunities for women, particularly given the shortage of skilled workers. Therefore, the Department will give priority consideration to applications with an occupational/industrial focus that link, in the first instance, to the delivery of technical assistance to employers and unions in information technology, high-tech skilled manufacturing (including tool and die, technicians and machinists to customize, repair, and service products) and other nonconstruction industries, including utilities, telecommunications, transportation, computer-based business, professional and personal services, and in *apprenticeship* in the skilled building trades in construction. In the second instance, priority consideration will be given to the delivery of technical assistance to employers and labor unions linked to jobs with private contractors on State/Federal Department of Transportation highway and road projects, including construction. In all, the aim of the technical assistance is to promote the placement and training of EZ/EC area women returning to work after welfare and other long-term disruptions in project-committed employer and union workplaces.

Proposals including ALL four (4) of the Department's priority interests (noted and summarized below) for CBO technical assistance to employers and labor unions will receive thirty (30) bonus points. To receive any bonus points, the proposal MUST focus on Empowerment Zones and Enterprise Communities where the CBO has a commitment to leverage WANTO activities in the EZ/EC areas, as noted in Appendices A and B. (1) Empowerment Zones and Enterprise Communities (EZ/EC), (2) Nonconstruction industrial and *apprenticeship* in the skilled building trades in construction and highway industries focuses, (3) employer and labor union commitment to placement and skill development to increase the participation of women returning to work after welfare and other long-term work disruptions, and (4) employer and labor union commitment for support services—particularly, child care, transportation, and transitional costs—for women returning to work from welfare and other long-term work disruptions.

1. Empowerment Zones and Enterprise Communities (EZs/ECs) have been identified in both rural and urban areas and can be characterized as having high incidences of poverty. Further, these are areas where other public resources are now being leveraged to revitalize their economies, including incentives for job creation in private enterprise. The Department also wants to leverage WANTO funding in these areas of concentrated economic resources to support both employers and labor unions who want to help themselves by increasing the participation of women in apprenticeship and nontraditional occupations, particularly EZ/EC area women who are returning to work from welfare and other long-term work disruptions. (See Appendices A and B for lists of EZ/EC areas and contact agencies.)

2. Industry-Occupation focus should reflect non-construction industries, particularly in manufacturing and information technology. The Department's priority is to emphasize the wide diversity of apprenticeship and nontraditional occupations beyond the building trades. While the most often-cited high-pay nontraditional occupations are those of the skilled building trades, e.g., carpenters, plumbers, electricians, sheet metal workers or welders, etc.; in the construction industry, there is also a variety of high-pay nontraditional occupations arising from the advances of high technology in nonconstruction industries. Jobs in some industries have significant labor shortages and can support the entry and skill development needs of women returning to work from welfare and other long-term work disruptions. High-tech has restructured manufacturing, both improving and/or developing new manufacturing processes in fiber optics, chemicals, and petroleum. Such career opportunities have increased the need for technicians' skills in electronics and related computer-based skills and machinists skilled to customize, service, build, and repair precision machinery in manufacturing. Still other fast growing computer-based jobs are found in service sector industries, e.g., business/professional services (including record keeping, financial, and personal services), other high-tech and information technologies driven by the growth in telecommunications, utilities, transportation, and health care industries. Statistical projections continue to anticipate employment growth and labor shortages in nonconstruction occupations, particularly those requiring technical skills. Thus, the window of opportunity is open for women returning to work for employers and labor unions in these industries who want to build a stable, skilled, and competitive work force.

3. Skill Development and Related Training is a necessary component to advancement to self-sufficiency for women returning to work from welfare and other long-term work disruptions. Not only must they work, but returning women also need a range of employment related skills, including readiness and job-specific skills to enter and remain in self-sufficient jobs and to move up the career ladder. Such training includes not only informal buddy or on-the-job mentoring by experienced workers, but also more structured work readiness and pre-apprenticeship programs linked to sponsored apprenticeship training programs. Therefore, it is important that proposed responses to this SGA show constructive strategies that promote both placement and training for women returning to work in the CBO's delivery of technical assistance to employer and labor union preparation to recruit, train, promote, and retain women in apprenticeship and other nontraditional occupations. Training is an area where community-wide resources and EZ/EC area leverages might provide advantages to WANTO technical assistance. Moreover, emphasis should be on both work and skills training during the workday, since many of the target women are single mothers with small children, that does not allow them much free time to obtain skills training after working hours.

4. Support Services are a necessary service for most work families. Many women seeking to enter or sustain themselves in apprenticeship and other nontraditional employment are unable to enter and/or complete training programs or employment because of the lack of child care, transportation, and transitional costs. This is another area where the community-wide human

resources and social services of EZ/EC areas can supplement and/or support WANTO technical assistance to employers and labor unions in their efforts with the CBO to women returning to work after welfare and other long-term work disruptions to become economically viable again. Therefore, grant proposals also should discuss workplace strategies for technical assistance to employers and labor unions that also bring to the attention of employers and labor unions the need and how to develop cooperative strategies with community resources to provide for transitional costs (including fees/dues, tools, uniforms, and living costs), child care, and transportation.

This notice describes the background, the application process, statement of work, evaluation criteria, and reporting requirements for this Solicitation for Grant Applications (SGA 98–04). WB anticipates that a total amount of $1,000,000 will be available for the support of all Fiscal Year 1998. (See Part II.C. for funding limitations per grant.)

DATES: One (1) ink-signed original, complete grant application plus five (5) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Office of Procurement Services, Room N–5416, Reference SGA 98–04, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. ET, August 17, 1998. Hand-delivered applications must be received by the Office of Procurement Services by that time.

ADDRESSES: Applicants who intend to submit a proposal must register immediately with the Grant Officer in order to receive any amendment to this solicitation that is issued. Please send registration to U.S. Department of Labor, Office of Procurement Services, Attention: Grant Officer, Reference SGA 98–04, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Grant applications must be mailed to U.S. Department of Labor, Office of Procurement Services, Attention: Grant Officer, Reference SGA 98–04, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Applicants are encouraged to verify delivery to this office directly through their delivery service and as soon as possible.

FOR FURTHER INFORMATION CONTACT: Applications will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. Questions concerning this solicitation may be sent to Lisa Harvey at the following Internet address: lharvey@dol.gov.

Part I. Background

The Women in Apprenticeship and Nontraditional Occupations (WANTO) Act

Pub. L. 102–530, signed October 27, 1992—

The Act has three major activities that affect this SGA:

1. Outreach to Employers and Labor Unions. DOL will promote the Act's program to employers and labor unions by informing them of the availability of technical assistance and keeping a data base of employers and community-based organizations with active grants.

2. Technical Assistance. DOL will provide grants to community-based organizations to deliver technical assistance to employers and labor unions to prepare them to recruit, train, and employ women in apprenticeable and nontraditional occupations.

3. Liaison Role of Department of Labor. DOL will serve as follows: (1) To act as a liaison between employers, labor, and the community-based organizations providing technical assistance, and (2) coordinating, conducting regular assessment, and seeking input of employers and labor unions.

Women's Bureau

Improving women's employment opportunities and related equity issues have been the driving force of the Bureau's activities and policies since its inception in 1920. Within the Department of Labor, the Director serves as the policy advisor to the Secretary on issues related to working women.

The Bureau has a history of encouraging women to consider the wide array of apprenticeable and other occupations nontraditional to women as one way to obtain economic self-sufficiency for themselves and their families. Nontraditional occupations (NTOs) are occupations where women account for 25 percent or less of all persons employed in an occupational group. NTOs include the often-cited skilled trades in construction, as well as the emerging ''good'' or high-pay jobs in nonconstruction as the result of advances in high-tech and the pervasiveness of microelectronics. Nonetheless, the lack of a critical mass of women in good, high-pay jobs in both construction and nonconstruction results in continued occupational segregation and artificial employment barriers to women's success in apprenticeship and NTOs, particularly in the old established workplaces and occupations, particularly in construction trades. Studies point out that once hired, women in construction face problems (sexism, racism, homophobia, inadequate toilet facilities, health and safety, isolation from other women, etc.) that erode their retention in jobs. These problems are beyond the usual problems faced by all women and some men—sexual harassment, pay equity, balancing work and family responsibilities. (See, Laurie Wessman LeBreton, Sara Segal Loevy, and Lauren Sugerman, Building Equal Opportunity, and Breaking New Ground: Worksite 2000.)

The Bureau of Apprenticeship and Training

The Women's Bureau co-administers WANTO with the Bureau of Apprenticeship and Training (BAT). BAT was established in 1937 as the national administrative agency in the Department of Labor to carry out the objectives of the National Apprenticeship Act (also known as the Fitzgerald Act), guided by the recommendations of the Federal Committee on Apprenticeship. BAT has the objective to stimulate and assist industry in the development, expansion, and improvement of apprenticeship and training programs designed to provide the skilled workers required by the American economy.

Under the National Apprenticeship Act, the Bureau is responsible for providing service to existing apprenticeship programs and technical assistance to organizations who would like to establish an apprenticeship program. The Bureau works very closely with State Apprenticeship Councils (SAC) and the educational system to deliver support services at the national, State and local level. When apprentices finish their training, they receive certificates of completion of apprenticeship. These are issued by the State apprenticeship agencies, or in those States not having such an agency, by the Bureau of Apprenticeship and Training in accordance with its recommended standards.

BAT is committed to improving the access of women to apprenticeship training to increase their employment in jobs that have historically put men on the career ladder to successful working careers. As apprenticeship has been the building block for a skilled and stable work force, it is also a career path that can provide an economically stable family life in mainstream America.

Definitions

Nontraditional Occupations (NTOs) are those where women account for less than 25 percent of all persons employed in a single occupational group.

Pre-Apprenticeship programs for women prepare them to keep pace with occupational skills training or entry-level employment in nontraditional occupations. The curriculum includes pre-vocational instruction in identification and use of tools, blueprint reading, basic shop skills, and safety procedures, as well as math skills, and physical conditioning.

Apprenticeship is a formal paid training-work agreement where labor and management work together to promote learning on the job. (Some BAT registered apprenticeship programs are operated by employers independent of labor unions.) To support the ''hands on'' learning, there must be related theoretical instruction (often classroom). After successfully completing the BAT-registered program standards—usually three to five years—the apprentice is awarded a certificate of completion by either the Bureau of Apprenticeship and Training (BAT) or the State Apprenticeship Council.

Community-Based Organizations (CBOs) are as defined in Section 4(5) of the Job Training Partnership Act (29 U.S.C 1501(5)): Private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services. For this solicitation, communities or significant segments of communities are the private nonprofit organizations that have demonstrated at least three years experience in (1) the operation and delivery of employment and training related services to women, and (2) the development of policies, programs and technical assistance for employers and labor unions for the recruitment, selection, training, placing, retaining, and otherwise preparation of WOMEN to enter and remain in APPRENTICESHIP and other NONTRADITIONAL OCCUPATIONS (NTOs).

Please Note That Eligible Applicants Must Not Be Classified Under The IRS Tax Code as A 501(c)(4) Entity.

A. Authorities

The technical assistance grants were first authorized under the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act, Pub. L. 102–530, approved October 27, 1992.

B. Purpose of the Demonstration

The purpose of the WANTO demonstration program is to provide technical assistance to employers and labor unions to encourage and prepare them to increase the participation of women in apprenticeship and nontraditional occupations in their workplaces. Such activity will increase the total level of employment of women in good jobs that pay living wages.

Part II. Application Process

A. Eligible Applicants

1. Private, Nonprofit, Community-Based Organizations (CBOs) are the only entities eligible for grant awards. Public bodies such as JTPA administrative entities, schools, and hospitals are not eligible for WANTO grants.

Please Note That Eligible Applicants Must Not Be Classified Under The IRS Tax Code as A 501(c)(4) Entity.

(a.) Community-Based Organizations (CBOs) are the eligible applicants to receive WANTO grants to provide technical assistance to private sector employers and labor unions that request assistance to prepare them/their workplaces to recruit, select, train, place, retain women in apprenticeship or other nontraditional occupations, including linking their apprenticeship program to pre-apprenticeship programs with specific employment. The Department is interested in leveraging WANTO technical assistance to private sector employers and labor unions in Empowerment Zones and Enterprise Communities (EZ/EC) as noted in Appendices A and B. The final goal would be to increase the participation of EZ/EC women returning to work after welfare or other long-term work disruptions in apprenticeship and nontraditional jobs/career paths. CBOs should note well: CBOs should demonstrate their interaction with the community beyond direct services for a fee, e.g., CBO activities for social and economic change in their community to support women.

(b.) Specific Technical Assistance provided by CBOs may include:

(1) Developing outreach and orientation sessions to recruit women into the employers' apprenticeable occupations and nontraditional occupations;

(2) Developing pre-apprenticeable occupations or nontraditional skills training to prepare women for apprenticeable occupations or nontraditional occupations;

(3) Providing ongoing orientations for employers, unions, and workers on creating a successful environment for women in apprenticeable occupations or nontraditional occupations;

(4) Setting up support groups and facilitating networks for women in nontraditional occupations on or off the job site to improve their retention;

(5) Setting up a local computerized data base referral system to maintain a current list of tradeswomen who are available for work;

(6) Serving as a liaison between tradeswomen and employers and tradeswomen and labor unions to address workplace issues related to gender; and

(7) Conducting exit interviews with tradeswomen to evaluate their on-the-job experience and to assess the effectiveness of the program.

(8) Developing cooperative projects that leverage WANTO technical assistance with EZ/EC area social and human services resources to support employers' and labor unions' integration of women returning to work after welfare or other long-term work disruptions.

(c.) Employers and Labor Unions are eligible to request and receive technical assistance provided by community-based organizations with a WANTO grant. Such technical assistance includes all items listed under A.(b.)(1)-(8) above and including linking pre-apprenticeship with a commitment for employment and/or sponsored apprenticeship training, and any other technical assistance an employer or labor union may need to increase the participation of women returning to work to enter and remain in apprenticeship and other nontraditional occupations, particularly in the manufacturing and information technology industries.

To be selected to receive technical assistance either through direct application with a CBO, or independent of a specific CBO, employers and labor unions must submit a request (as described below) and send it directly to the U.S. Department of Labor, Office of Procurement Services, Room N–5416, Attention: Lisa Harvey, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(d.) All Employers and Labor Unions must provide a written commitment for technical assistance by answering the following:

(1) A description of the need for assistance;

(2) A description of the types of apprenticeable occupations or nontraditional occupations in which the employer or labor union would like to train or employ women;

(3) Assurances that there are or will be suitable and appropriate employment available in the apprenticeable occupations or in the nontraditional occupations being targeted; and

(4) Commitments that all reasonable efforts should be made to place women in apprenticeable occupations or nontraditional occupations as they develop skills.

B. Contents

To be considered responsive to this SGA, each application must consist of, and follow the order of, the sections listed in Part III of this solicitation. The application must also include information which the applicant believes will address the selection criteria identified in Part IV. Technical proposals shall not exceed 20 single sided, double spaced, 10 to 12 pitch typed pages (not including attachments). *Any Proposal That Does Not Conform to These Standards Shall be Deemed Nonresponsive to This SGA and Will Not be Evaluated.*

1. Technical Proposal

Each proposal shall include: (1) A two-page abstract summarizing the proposal, and (2) a complete description of the CBO's program for technical assistance, including information required in *Part III and IV.* No cost data or reference to price shall be included in the technical proposal.

2. Cost Proposal

The cost proposal is a physically separate document and shall not be included in the twenty (20) page limit. The cost (business) proposal must be separate from the technical proposal. (If applicants do not have the current version of the standard grant forms listed below, they must download the forms from the following OMB website address: www.whitehouse.gov.wh/eop/omb/grants/). The transmittal letter and the grant assurances and certifications forms shall be attached to the business proposal, which shall consist of the following:

a. Standard Form 424 ''Application for Federal Assistance,'' signed by an official from the applicant's organization who is authorized to enter the organization into a grant agreement with the Department of Labor. The *Catalog of Federal Domestic Assistance Number (CFDA) is 17.700*;

b. Standard Budget Form 424A ''Budget Information Form,''; and

c. Budget Narrative; provide a narrative explanation of the budget which describes all proposed costs and indicates how they are related to the operation of the project. Provide this information separately for the amount of requested Federal funding and the amount of proposed Non-Federal contribution. In an application which proposes to fund staff positions, the budget narrative must provide information which describes the number of proposed positions by title and by the amount of staff time and salary charged to Federal and Non-Federal funding resources. The Budget Narrative provides the detailed description of the costs reflected on the SF 424A.

C. Funding Levels

The Department expects to have $1,000,000 to be disbursed through WANTO grants. The Department expects to make up to eight (8) awards to Community-Based Organizations (CBOs). The Women's Bureau expects awards to range from approximately $75,000 to $150,000, depending upon the scope of the proposal's demonstration and technical assistance activities to be delivered.

D. Length of Grant and Grant Awards

The initial performance period for the grants awarded under this SGA shall be for fifteen (15) months with one (1) option to extend for up to three months as a no-cost extension to complete final reports. Each applicant shall reflect in their application the intention to begin operation no later than *September 1998.*

E. Submission

One (1) ink-signed original, complete grant application (plus five (5) copies of the Technical Proposal and three (3) copies of the Cost Proposal must be submitted to the U.S. Department of Labor, Office of Procurement Services, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than 4:45 p.m. ET, August 17, 1998. Hand delivered applications must be received by the Office of Procurement Services by that time. Any application received at the Office of Procurement Services after 4:45 p.m. ET will not be considered unless it is received before an award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 17, 1998 (i.e., not later than August 12, 1998);

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the above address; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. ET at the place of mailing two working days, excluding weekends and Federal holidays, prior to August 17, 1998 (i.e., not later than 5 p.m. ET August 13, 1998).

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the wrapper or envelope.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Procurement Services on the application wrapper or other documentary evidence of receipt maintained by that office. Applications sent by E-mail, telegram, or facsimile (Fax) will *not* be accepted.

Part III. The Statement of Work—Key Features

A. Introduction and Priority

All respondents to this SGA (98–04) are encouraged to carefully read and review the material discussed in the summary section above on this SGA. Applications that do not meet the minimum terms and conditions of this solicitation may be disqualified. The Department has priority interest in providing technical assistance to employers and labor unions in nonconstruction industries, particularly manufacturing and information technology, and in registered *apprenticeships* in the skilled building trades in construction, including highway construction, who are interested in supporting the placement and skill development of women returning to work after welfare or other long-term work disruptions residing in rural and urban EZ/EC communities noted in Appendices A and

B. Grants will be awarded competitively to private, nonprofit Community-Based Organizations (CBOs)

with at least three (3) years of experience in providing employment and training programs and support services to increase the participation of women in apprenticeship and nontraditional occupations, particularly for women with employment barriers, including women returning to work after welfare and other work disruptions.

Note well: Each Proposal Must Have a Specifically Defined Internal Evaluation Design.] (See Part II.A. Eligible Applicants, above.)

Such experienced CBOs will deliver technical assistance to employers and labor unions to prepare them to recruit, train, promote, and retain women returning to work from welfare to enter and remain in apprenticeship and nontraditional occupations. The Department has priority interest in further focusing on developing cooperative projects in Federally designated Empowerment Zones and Enterprise Communities (EZs/ECs) where a number of public programs are being leveraged to revitalize their economies. Further, the Department has a priority interest in focusing WANTO technical assistance to employers and labor unions in nonconstruction industries, particularly in areas with potential for good, high-pay occupations with benefits for stable year-round work in nonconstruction industries, e.g., public utilities, telecommunications, high-tech manufacturing (including tool and die occupations), computer-based information technologies (including business and professional services), high-tech health industries, and private employers and contractors in State or Federal Department of Transportation highway and road projects and *apprenticeship* in the skilled building trades.

Bonus Points: Thirty (30) bonus points will be added to the technical score of proposals that MUST focus on EZ/EC areas, as well as include the priorities discussed above in the Summary section of this SGA and noted below.

1. Provide technical assistance in Empowerment Zones and Enterprise Communities;

2. Provide technical assistance to employers and labor unions in nonconstruction industries, particularly in high-tech and skilled manufacturing and information technology;

3. Provide commitment from employers and labor unions for matches with EZ/EC area women who are returning to work after welfare and other dependencies;

4. Provide employers and labor unions with community-wide resources to assist employers and labor unions in providing support services—child care, transportation, and transitional costs—so that women returning to work can enter and complete apprenticeship and other nontraditional training and employment;

5. Provide employers and labor unions with strategies to allow labor force entry women to work and participate in developmental skill and related training, both informal on-the-job/buddy systems and more formal skill attainment.

Other projects will receive consideration and be evaluated.

B. Key Features

1. Wanto Project Proposal Submissions should provide for technical assistance between a Community-Based Organization (CBO) and requesting employers and labor unions, particularly nonconstruction industries. Such an entity can also provide for the linking of pre-apprenticeship programs to apprenticeship programs sponsored by employers and labor unions. All technical assistance grant activity has the goal to increase the employment of women in apprenticeship and other nontraditional occupations.

Grant proposals must include a specific internal program evaluation design and process and must specify expected outcomes based on the CBO's past experience and expenditures for the following:

—The proposed number of employers and labor unions to be provided on-site technical assistance, those to receive, and methodology for reaching proposed goals;

—The proposed number of women to be trained, placed, promoted, and/or retained in apprenticeship and other nontraditional employment and methodology for reaching proposed goals;

—Any other activities for which grant funds will be expended.

2. CBOs that apply for funding to provide technical assistance must provide information on their experience and accomplishments in apprenticeship and nontraditional activities in the areas of: (1) Policy, (2) program development, (3) program operation, and (4) the provision of technical assistance to business, labor organizations, and other activities in the employment and training community related to increasing the participation of women in apprenticeship and nontraditional employment.

a. List name, trade, and organizational position of tradeswomen and other women in nontraditional occupations on staff or on your organization's Board of Directors. Include the dates when tradeswomen served in active paid or unpaid positions in your organization.

b. In addition, all applications must also include a management and staff loading plan. The management plan is to include a project organizational chart and accompanying narrative which differentiate between elements of the applicant's staff and subcontractors or consultants who will be retained. The staff loading plan must identify all key tasks and the hours required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including subcontractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

c. Proposed projects should include a discussion of support services to participants that include (1) transitional costs (which may include living expenses as well as fees, union dues, uniforms, etc.), (2) child care, and (3) transportation.

d. Proposed projects should include outreach activities to improve apprenticeship and NTO opportunities for women in their own workplaces as well as women seeking to enter NTO career ladder employment and training.

e. Proposed projects should clearly identify expected outcomes in terms of: (1) An employer or labor union workplace—number of welfare to work placements and type of training or technical assistance agreement, (2) number of apprenticeship training commitments and other work commitments by employer/labor organizations, (3) number of participants moving into higher level NTO employment, (4) number of women participants moving from pre-apprenticeship into a sponsored apprenticeship program, and (5) number of pre-apprenticeship women moving into permanent employment without participating in an apprenticeship program.

f. Proposed project submissions should include a listing of all items for which grant funds will be expended. (Do not include any cost information for this item in the technical proposal, but expenditure items *MUST* be listed.)

g. Proposed project submissions should include any leverage or co-funding anticipated by this submission, particularly leverage with other specific EZ/EC programs (e.g., HUD or USDA) and interaction with overall EZ/EC program contacts listed with EZ/EC

cities and areas listed in Appendices A and B.

h. Proposed project submissions should include copies of the CBO's budget and major funding sources for the past three (3) years, including foundation and government grants and other types of funding.

In addition to the grant's final report, proposed project submissions should include plans for a ''how-to-do-it'' project replication manual, including awareness/outreach material, technical assistance and curriculum manual(s) and all other materials developed as a result of the grant activities. All grant materials should be submitted with ''hard copy'' and electronic (computer-based) copy.

j. The proposed project submission should include any activities to encourage and promote the continuation or expansion of grant activities beyond the grant's period of program performance.

Part IV. Evaluation Criteria and Selection

Applicants are advised that selection for a grant award is to be made after careful evaluation of technical applications by a panel. Each panelist will evaluate applications against the various criteria on the basis of 100 points. The scores will then serve as the primary basis to select applications for a potential award. Clarification may be requested of grant applicants if the situation so warrants it. Please see Part III, Sections A and B for additional information on the elements against which proposals will be reviewed. After proposals are fully evaluated for responsiveness to Technical Evaluation Criteria 1.a.–1.c., the distribution of bonus points will be determined. Only those proposals whose technical score falls within the technically acceptable range will be eligible to receive bonus points.

1. Technical Evaluation Criteria—Points

a. Capabilities and Qualifications of CBO and Staff (NTO experience, education, and work with the community for social and/or economic change to support women): 50 points.

b. Established Linkages and Relationship with Employers, Labor Unions, EZ/EC Communities and Welfare to Work Social Agencies: 25 points.

c. Quality and Scope of WANTO Project: 25 points. (Must include a specific internal program evaluation design. Such as, proposed number of employers, labor unions for on-site technical assistance, number of women affected and served by the WANTO project and placed in apprenticeship or nontraditional employment; proposed career ladder and technical assistance strategies to promote the increase in women in apprenticeship and nontraditional occupations for employers and labor unions; proposed job placement outcomes.)

2. Bonus Points

a. Priority Focus: 30 points. (See Part III.A. Statement of Work—Key Features, Bonus Points.)

3. Cost Criteria

Proposals will be scored, based on their costs in relation to other proposals submitted in response to this SGA.

4. Total Score

Technical quality of proposals will be weighted three (3) times the estimated price in ranking proposals, for purposes of selections for awards. Proposals received will be evaluated by a review panel based on the criteria immediately above, in Technical Evaluation Criteria 1 and 2. The panel's recommendations will be advisory, and final awards will be made based on the best interests of the Government, including but not limited to such factors as technical quality, geographic balance, occupational/industrial impact, and diversity in service providers.

The Department wishes to make it clear that it is not simply the best written proposals that will be chosen, but rather those which demonstrate the greatest experience and commitment to assisting employers and labor organizations to successfully develop successful strategies to increase the participation of women in higher-paying apprenticeship and nontraditional occupations and to expand the employment and self-sufficiency options of women returning to work after welfare and other work and family disruptions. In addition, the Department considers geographic and race-ethnic diversity in the array of award-winning proposals important considerations in making the final awards.

The submission of the same proposal from any prior year WANTO competition does not guarantee an award under this solicitation. Although the Government reserves the right to award on the basis of the initial proposal submission, the Government may establish a competitive range or technically acceptable range based upon proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The Government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Grant Officer's determination for award under this SGA 98–04 is the final agency action.

Part V

A. Deliverables

(This section is provided only so that grantees may more accurately estimate the staffing budgetary requirements when preparing their proposal. Applicants are to exclude from their cost proposal the cost of any requested travel to Washington, DC.)

1. No later than four (4) weeks after an award, the grantees and partners shall meet with the Women's Bureau and the Bureau of Apprenticeship and Training at the Post-Award Conference to discuss the demonstration project and related components and technical assistance activities, time lines, technical assistance outcomes, assessment for comment, and final approval. The grantees and partners and the Department will discuss and make decisions on the following program activities:

a. The proposed technical assistance commitments for employment, apprenticeship and related nontraditional occupation activities and responsibilities; the number of partnerships with EZ/EC communities, employers and labor unions to be served.

b. The methodology the proposed partnership will use to support/change management and employee attitudes to promote female workers in nontraditional occupations.

c. The types of systemic change anticipated by technical assistance strategies anticipated to be incorporated into ongoing employer recruitment, hiring, training, and promotion of women in apprenticeship and apprenticeable nontraditional occupations.

d. The occupational, industrial, and geographical impact anticipated.

e. The supportive services to be provided to employers and women after successful placement into employment, apprenticeship, or other supporting nontraditional occupations.

f. The plan for the development and maintenance of a relationship with the State level of the Federal Bureau of Apprenticeship and Training and the State Apprenticeship Council.

The Women's Bureau and the Bureau of Apprenticeship and Training will provide further input orally and in writing, if necessary, within ten (10) working days after the Post-Award Conference.

1. No later than ten (10) weeks after an award, the grantee(s) and the

Women's Bureau will confirm the ''plan of action'' or detailed time line for program implementation.

2. No later than twelve (12) weeks after an award, the grantee(s) shall have begun the provision of technical assistance to employers and labor unions to recruit, select, train, place, retain, and other areas of preparation to promote the increase of women in apprenticeable occupations and other nontraditional training for women, characterized by employment growth and above average earnings.

3. No later than sixteen (16) weeks after an award, the first quarterly progress report of work done under this grant will be due. Thereafter, quarterly reports will be due twenty (20) working days after the end of each of the remaining quarters.

Quarterly progress reports must include:

a. A description of overall progress on work performed during the reporting period—(a) the number of employers and labor unions provided on-site, off-site (conferences, workshops, seminars, training, etc., (b) number of women trained (on and off the workplace), placed in apprenticeship or other nontraditional employment. Describe: (1) Any linkages of pre-apprenticeship (on and off a workplace) with sponsored apprenticeship: Number of women effected or participating in programs; include name and address of workplace/company and person responsible for the operation, (2) number of employers and labor unions receiving technical assistance—name, address, size of the workplace, including proportion of women, include brief profiles of employers and labor organizations, (3) describe any systemic workplace and policy changes—actual or in process, including the hiring and promotion of women already in the workplace, career ladders or other training activities, (4) public presentations, (5) media articles or appearances, (6) publications disseminated, and (7) publications developed.

b. An indication of any current problems which may impede the performance of the grant and the proposed corrective action.

c. A discussion of work to be performed during the next reporting period.

Between scheduled reporting dates the grantee(s) also shall immediately inform the Grant Officer's Technical Representative (GOTR) of significant developments affecting the grantee's ability to accomplish the work.

5. No later than sixty-four (64) weeks after an award, the grantee(s) shall submit three (3) copies of the draft Final Report, an integrated draft analysis of the process and results of the technical assistance activities during the year. The Women's Bureau and the Bureau of Apprenticeship and Training will provide written comments on the draft Report within twenty (20) working days if substantive problems are identified. The grantee's response to these comments shall be incorporated into the Final Report.

6. The Final Report shall cover findings, final performance data, outcome results and assessment, and employer or labor organization plans for follow-up of participants. The Final Report shall provide all information to replicate the project including copies of curriculums, technical assistance materials developed for the project and technical assistance—videos, posters, notices, etc., as well as any plans for replication and dissemination of information. An Executive Summary of the findings and recommendations shall be included in the Final Report, completely separate or separately combined with the Final Report.

No later than sixty-four (64) weeks after an award, the grantee(s) shall (1) submit one (1) diskette (IBM compatible, WordPerfect 6.1), one (1) camera-ready copy of the Final Report, and five (5) copies of the camera-ready Final Report, bound in a professional manner, and not a collection of loose leaf sheets, and (2) computer-based, electronic files for each of the other products—e.g., manual(s), curriculums, ''how-to-do-it'' handbooks, videos, etc.—paid for with grant funds, along with five (5) copies of the final camera-ready products.

B. Administrative Provisions

The grant awarded under this SGA shall be subject to the following administrative standards and provisions:

29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements;

29 CFR Part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.

C. Certifications and Assurances

If the applicant is awarded a grant, they are required to operate the program in accordance with the following Certifications and Assurances. An original signed and dated signature page providing the following Certifications and Assurances must accompany the Cost Proposal. Each can be downloaded from the OMB website address www.whitehouse.gov/wh/eop/omb/grants/.

D. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

a. State and Local Governments—OMB Circular A–87.

b. Educational Institutions—OMB Circular A–21.

c. Nonprofit Organizations—OMB Circular S–122.

d. Profit-making Commercial Firms—48 CFR Part 31.

Signed at Washington, DC., on June 24, 1998.

Lawrence J. Kuss,

Grant Officer.

BILLING CODE 4510–30–P

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EZ/EC
BUILDING COMMUNITIES TOGETHER

USDA's Rural Empowerment Zones and Enterprise Communities

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- ***La Jicarita Enterprise Community*** - Mora, Rio Arriba, Taos Counties
  Ron Martinez
  La Jicarita Enterprise Community
  P.O. Box 546
  Penasco, NM 87553
  Phone (505) 587-0074 Fax (505) 587-1687
  E-Mail - ljec@laplaza.org

Ohio

- ***Greater Portsmouth EC*** - Scioto County
  Alex Maksimovic
  City of Portmouth Community Development Department
  740 2nd St.
  Portmouth, OH 45662
  Phone (614) 354-5673 Fax (614) 353-4583
  E-Mail - coming soon

Oklahoma

- ***Southeaast Oklahoma EC*** - Choctaw, McCurtain County
  Bob Yandell
  Little Dixie Community Action Agency, Inc.
  502 West Duke St.
  Hugo, OK 74743
  Phone (405) 326-6441 Fax (405) 326-6655
  E-Mail - coming soon

Oregon

- ***Josephine County EC*** - Josephine County
  Teal Kinamun
  Josephine County Community Service-Comm. Action Agency
  317 Northwest "B" Street
  Grants Pass, OR 7526
  Phone (503) 474-5448 Fax (503) 474-5454
  E-Mail - coming soon

Pennsylvania

- ***City of Lock Haven Federal EC*** - Clinton County
  Maria Boileau
  City of Lock Haven
  20 E. Church St.
  Lock Haven, PA 17745
  Phone (717) 893-5903 Fax (717) 893-5905
  E-Mail - lockhaven@www.ezec.gov

South Carolina

- ***Williamsburg- Lake City EC*** - Williamburg, Florence County
  Faith Rivers
  Williamburg Enterprise Community
  147 W. Main St.
  Kingstree, SC 29556
  Phone (803) 354-9070 Fax (803) 354-2106
  E-Mail - coming soon

South Dakota

- ***Beadle/ Spink Dakota EC*** - Beadle, Spink Counties
  Robert Hull
  Northeast South Dakota Community Action Program
  414 ThirdAvenue
  Sisseton, SD 57262
  Phone (605) 698-7654 Fax (605) 698-3038
  E-Mail - nesdcap@tnics.com

Tennessee

- ***The Fayette County/ Haywood County Enterprise Community*** - Fayette, Haywood, Counties
  John Sicola
  The Fayette Haywood Enterprise Community Steering Committee
  157 Poplar Rd. Rm B150
  Memphis, TN 38103
  Phone (901) 576-4610 Fax (901) 576-3519
  E-Mail - coming soon

  Scott/ McCreary Area Enterprise Community - Scott(TN), McCreary (KY) Counties
  Leslie Winningham
  Scott McCreary Area Revitalization Team (SMART)
  407 Industrial Lane, Suite 2
  Oneida, TN 37841
  Phone (423) 569-6380 Fax (423) 569-5710

E-Mail- lwinningham@highland.net

Texas

- ***Rio Grande Valley Empowerment Zone*** - Cameron, Hidalgo, Starr, Willacy Counties
  Bonnie Gonzalez
  Rio Grande Valley Empowerment Zone 301 S Texas
  Mercedes, TX 78570
  Phone (210) 514-4000 Fax (210) 514-4007
  E-Mail - coming soon

Virginia

- ***Accomack- Northampton Virginia EC*** - Northampton, Accomack Counties
  Monte Penney
  The Economic Empowerment & Housing Corporation
  P.O. Box 814
  Nassawadox, VA 23413
  Phone (804) 442-4509 Fax (804) 442-7530
  E-Mail - veseehc@esva.net

Washington

- ***Lower Yakima County Rural EC*** - Yakima County
  Dave Fontara
  Yakima County
  128 North Second Street
  Yakima, WA 98901
  Phone (509) 574-1500 Fax (509) 574-1501
  E-Mail - coming soon

West Virginia

- ***Central Applachia EC*** - Braxton, Clay, Fayette, Nicholas, Roane
  Terrell Ellis
  Central Applachia Empowerment Zone
  174 Main St., P.O. Box 176
  Clay, WV 251215
  Phone (304) 587-2034 Fax (304) 587-2027
  E-Mail - coming soon

  McDowell County EC - McDowell County
  Cliff Moore
  McDowell County Action Network
  Route 103

Wilcoe, WV 24895
Phone (304) 448-2118 Fax (304) 448-3287
E-Mail - coming soon

[FR Doc. 98–17401 Filed 6–30–98; 8:45 am]
BILLING CODE 4510–30–C

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–4 CARP DPRA]

Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Notices of intent to participate.

SUMMARY: The Library of Congress is requesting that those parties interested in participating in a Copyright Arbitration Royalty Panel (''CARP'') proceeding for establishing rates and terms for digital phonorecord deliveries file a Notice of Intent to Participate. Those parties who have already filed such a notice need not file again.

DATES: Notices of Intent to Participate are due July 31, 1998.

ADDRESSES: Notices of Intent to Participate, when sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, they should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–407, First and Independence Avenues, SE, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William Roberts, Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Facsimile: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 (''Digital Performance Act''). Public Law 104–39, 109 Stat. 336. Among other things, it confirms and clarifies that the scope of the compulsory license to make and distribute phonorecords of nondramatic musical compositions includes the right to distribute or authorize distribution by means of a digital transmission which constitutes a ''digital phonorecord delivery.'' 17 U.S.C. 115(c)(3)(A). A ''digital phonorecord delivery'' is defined as each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient. * * '' 17 U.S.C. 115(d).

The Digital Performance Act established that the rate for all digital phonorecord deliveries made or authorized under a compulsory license on or before December 31, 1997, is the same rate in effect for the making and distribution of physical phonorecords. 17 U.S.C. 115(c)(3)(A)(i). For digital phonorecord deliveries made or authorized after December 31, 1997, the Digital Performance Act established a process that may take two-steps for determining the terms and rates. 17 U.S.C. 115(c)(3)(A)(ii). The first step in the process is a voluntary negotiation period initiated by the Librarian of Congress to enable copyright owners and users of the section 115 digital phonorecord delivery license to negotiate the terms and rates of the license. The Librarian initiated this period on July 17, 1996, and directed it to end on December 31, 1996. 61 FR 37213 (July 17, 1996).

The second step of the process is the convening of a CARP to determine reasonable terms and rates for digital phonorecord deliveries for parties not subject to a negotiated agreement. In the July 17, 1996, **Federal Register** notice, the Library stated that CARP proceedings would begin, in accordance with the rules of 37 CFR part 251, on January 31, 1997. 61 FR 37214 (July 17, 1996). The Library also directed those parties not subject to a negotiated agreement to file their petitions to convene a CARP, as required by 17 U.S.C. 115(c)(3)(D), by January 10, 1997, and their Notices of Intent to Participate in CARP proceedings by January 17, 1997. *Id*. In addition, the Library directed interested parties to comment by November 8, 1996, on the possibility of consolidating the CARP proceeding to determine terms and rates for digital phonorecord deliveries with the proceeding to adjust the mechanical royalty rate for the making and distributing of physical phonorecords. 61 FR 37215 (July 17, 1996).

On November 8, 1996, the Library received a joint motion from the Recording Industry Association of America (''RIAA''), the National Music Publishers' Association, Inc. (''NMPA''), and The Harry Fox Agency, Inc. (''Harry Fox'') to vacate the scheduled dates appearing in the July 17, 1996, **Federal Register** notice for convening a CARP. The Library vacated the schedule on December 11, 1996, and established a new precontroversy discovery schedule and date for the filing of Notices of Intent to Participate. 61 FR 65243 (December 11, 1996).

After publication of the new schedule, representatives of the RIAA, NMPA and Harry Fox informed the Library that terms and rates for digital phonorecord deliveries could be negotiated through voluntary agreement, and requested that the Library vacate the new schedule to allow sufficient time for such negotiations. The Library vacated the new schedule on February 3, 1997. 62 FR 5057 (February 3, 1997). The parties did reach a voluntary agreement and, pursuant to the rules, the Library published the proposed rates and terms for digital phonorecord deliveries for public comment. 62 FR 63506 (December 1, 1997). In that notice of proposed rulemaking, the Library specified that any party that objected to the proposed rates and terms was required to file a Notice of Intent to Participate and was expected to fully participate in a CARP proceeding. 62 FR 63507 (December 1, 1997). However, the Library did not call for the filing of Notices of Intent to Participate by parties other than those who objected to the proposed rates and terms.

Two parties, the United States Telephone Association (''USTA'') and the Coalition of Internet Webcasters (''Webcasters''), opposed the proposed terms and rates and filed Notices of Intent to Participate. A third party, Broadcast Music, Inc. (''BMI''), also filed a Notice of Intent to Participate in the event that a CARP takes place. BMI's interest is the relationship between digital phonorecord deliveries and the public performance right.

Notices of Intent To Participate

The parties in this proceeding continue to negotiate in an effort to reach agreement as to the terms and rates for digital phonorecord deliveries. In the event that a CARP becomes necessary, participating parties must be identified. Because earlier deadlines for the filing of Notices of Intent to Participate were vacated at the parties' request, Notices have yet to be filed in this proceeding, save those filed by USTA, Webcasters and BMI. Consequently, the Library is instructing those parties (other than USTA, Webcasters and BMI) who wish to participate in a CARP proceeding to establish rates and terms for digital phonorecord deliveries to file a Notice of Intent to Participate by July 31, 1998.

Dated: June 24, 1998.

David O. Carson,

General Counsel.

[FR Doc. 98–17478 Filed 6–30–98; 8:45 am]

BILLING CODE 1410–33–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–085]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas H. Jones, Patent Counsel, NASA Management Office-JPL, 4800 Oak Grove Drive, Mail Stop 180–801, Pasadena, CA 91109; telephone (818) 354–5179.

NPO–19293–2–CU: Convex Diffraction Grating Imaging Spectrometer;

DRC–098–001: On-Line μ-Method for Robust Flutter Prediction in Expanding a Safe Flight Envelope for an Aircraft Model under Flight Test;

NPO–20263–1–CU: An Improved Infrared Detector System with Controlled Thermal Conductance;

NPO–18414–4–CU: Synchronous Parallel System for Emulation and Discrete Event Simulation.

Dated: June 24, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–17406 Filed 6–30–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has submitted the following revised information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. It was originally published on January 15, 1998. No comments relating to the information collection were received.

DATES: Comments will be accepted until July 31, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518-6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0067.

Form Number: NCUA 5310.

Type of Review: Revision of a currently approved collection.

Title: Corporate Credit Union Monthly Call Report.

Description: NCUA utilizes the information to monitor financial conditions in corporate credit unions and to allocate supervision and examination resources. The respondents are corporate credit unions or ''banker's banks'' for natural person credit unions.

Respondents: All corporate credit unions.

Estimated No. of Respondents/ Recordkeepers: 40.

Estimated Burden Hours Per Response: 1.44 hours.

Frequency of Response: Monthly.

Estimated Total Annual Burden Hours: 960.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on May 11, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–17407 Filed 6–30–98; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Section 50.71(e)(4), for Facility Operating License Nos. NPF–2 and NPF–8 issued to Southern Nuclear Operating Company, Inc., et al. (the licensee) for operation of the Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, located in Houston County, Alabama.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow an exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the FNP, Units 1 and 2, Updated Final Safety Analysis Report (UFSAR). Under the proposed exemption, the licensee would submit UFSAR updates to the single, unified Farley UFSAR for the two units within 6 months following the FNP Unit 1 refueling outage, not to exceed 24 months from the last submittal.

The proposed action is in accordance with the licensee's application for exemption dated January 19, 1998.

The Need for the Proposed Action

The proposed action would provide an exemption to the requirements of 10 CFR 50.71(e)(4), which requires licensees to submit updates to their UFSAR within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since FNP, Units 1 and 2, share a common UFSAR, the licensee must update the same document within 6 months after a refueling outage for either unit. Allowing the exemption would maintain the UFSAR current within 24 months of the last revision and still would not exceed a 24-month interval from submission of the 10 CFR 50.59 design change report for either unit.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that issuance of the proposed exemption to 10 CFR 50.71(e)(4) is an administrative change unrelated to plant operation.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the occupational or offsite radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed

action does not affect nonradiological plant effluents and has no other nonradiological environmental impact. Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the FNP, ''Final Environmental Statement related to the Operation of Joseph M. Farley Nuclear Plant, Units 1 and 2,'' dated December 1974 and its Addendum, NUREG–0727, dated September 1980.

Agencies and Persons Consulted

In accordance with its stated policy, on June 2, 1998, the staff consulted with the Alabama State official, Mr. K. Whatley of the Alabama Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 19, 1998, 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 Houston—Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 25th day of June 1998.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17488 Filed 6–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Advanced Reactor Designs; Revised

A two-day meeting of the ACRS Subcommittee on Advanced Reactor Designs scheduled to be held on Monday and Tuesday, July 6–7, 1998, has been changed to a one-day meeting which will be held on Tuesday, July 7, 1998, beginning at 8:30 a.m., in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. Notice of this meeting was published in the **Federal Register** on Wednesday, June 17, 1998 (63 FR 33102). All other items pertaining to this meeting remain the same as previously published.

For further information contact, Mr. Noel F. Dudley, cognizant ACRS staff engineer, (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: June 25, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–17487 Filed 6–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 8, 1998, through June 19, 1998. The last biweekly notice was published on June 17, 1998 (63 FR 33103).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve 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. The basis for this proposed determination for each amendment request is shown below.

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 before action is taken. 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 Administration 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 a hearing and petitions for leave to intervene is discussed below.

By July 31, 1998, 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 for the particular facility involved. 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 a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of 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 which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Detroit Edison Company, Docket No. 50–16, Enrico Fermi Atomic Power Plant, Unit 1, Monroe County, Michigan

Date of amendment request: January 28, 1998 (Reference NRC–98–0027)

Description of amendment request: The proposed amendment will revise Section F and I of the Fermi, Unit 1 Technical Specifications to include requirements for control of effluents; dose limits; annual reporting in accordance with requirements of 10 CFR 50.36a; and numerical guideline criteria based on 10 CFR 50, Appendix I. Also, this amendment will correct several editorial errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration using the standards in 10 CFR 50.92(c). The licensee's analysis is presented below:

(1) Does the proposed change significantly increase the probability or consequences of an accident previously evaluated?

No, the proposed submittal establishes additional requirements and limits on radioactive effluent releases. No existing requirements are deleted. For these reasons, this proposed change will not significantly increase the probability or consequences of an accident at Fermi 1.

(2) Will the proposed amendment create the possibility of a new or different kind of accident from any accident previously analyzed?

No, the addition of requirements for radioactive effluent releases will not cause a new kind of accident. The additional requirements involve having a functional waste system with procedures, submitting an annual report, and restricting the potential dose to the public from effluents. These changes, in themselves, do not require a different type of operation of systems. Any new system installed to enable future discharges will be evaluated at the time of design.

(3) Will the proposed change significantly reduce the margin of safety at the facilit y?

No, adding new requirements for radioactive effluents will not decrease the margin of safety. Since no existing requirements are being eliminated, this change will not reduce the margin of safety of the facility.

NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esquire, Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Branch Chief: John W. N. Hickey.

Detroit Edison Company, Docket No. 50–16, Enrico Fermi Atomic Power Plant, Unit 1, Monroe County, Michigan

Date of amendment request: January 28, 1998 (Reference NRC–98–0025).

Description of amendment request: The proposed amendment will revise the Technical Specifications on access controls to provide flexibility while maintaining similar controls over access. Provisions will be established for cases where work is performed on the Protected Area boundary, such that the boundary temporarily will not meet the Technical Specification criteria. Redundancy between Technical Specifications will be eliminated. Figure B–1, ''Facility Plan,'' will be modified to show the buildings within the Protected Area, delete locations of the Protected Area gates and doors, and delete a building and equipment outside the Protected Area which are planned to be removed in the future. Finally, several editorial corrections will be made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration using the standards in 10 CFR 50.92(c). The licensee's analysis is presented below:

(1) Does the proposed change significantly increase the probability or consequences of an accident previously evaluated?

The proposed changes do not involve a significant increase in the probability or consequences of an accident. The proposed changes all involve access control, the Protected Area boundary, or deletion of details from a sketch, including a building and equipment planned for removal, which are outside the Protected Area. The changes still require control over the gates and doors to the Protected Area and that only authorized individuals will be issued the Fermi 1 key. Since the changes do not involve operation of any system, modifications to any required plant systems, nor eliminate the requirements for control of the Fermi 1 key and access points, the probability or consequences of an accident will be unaffected.

(2) Will the proposed amendment create the possibility of a new or different kind of accident from any accident previously analyzed?

The proposed changes do not create the possibility of a new or different type of accident from any previously evaluated. The proposed changes will not lead to any different method of operating any systems, nor will they create any tests involving plant systems. The changes only affect the access control requirements, the Protected Area boundary, and deletion of details from a sketch. Changes of who issues the key, how doors are secured, provisions for temporary modifications to the boundary, requirements to observe the Protected Area boundary if degraded, wording consolidation, and more accurate building outlines cannot cause a new or different type of accident. Access points and the Fermi 1 key are still required to be controlled. The Boilerhouse and main unit output transformer are not used to support the Fermi 1 nuclear facility. Removal of the Boilerhouse and main unit output transformer from the drawing will help facilitate future removal plans, but will not cause a new or different accident from any previously evaluated, since they provide no support to the Fermi 1 nuclear facility. For these reasons, the proposed changes to the access control requirements and Figure B–1 will not create the possibility of a new or different type of accident.

(3) Will the proposed change significantly reduce the margin of safety at the facility?

The proposed changes do not involve a significant reduction in the margin of safety. The changes involve access control, the Protected Area boundary, and the sketch of the facility. Doors and gates in the Protected Area boundary will still be required to be secured when personnel are not inside. The keys will still be required to be controlled and issued only to authorized personnel. Compensatory measures will be required if the Protected Area boundary is degraded such that the requirements are not met. Therefore, there will not be a significant reduction in the margin of safety.

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, NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esquire, Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Branch Chief: John W. N. Hickey.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: June 5, 1998 (NRC–98–0067).

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 2.1.2 to incorporate cycle-specific safety limit minimum critical power ratios (SLMCPRs) for the core that will be loaded during the upcoming refueling outage and update the footnote associated with the SLMCPR values to limit applicability of the SLMCPR values to Cycle 7 operation only.

Basis for proposed no significant hazards consideration determination: 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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment establishes a revised SLMCPR value of 1.11 for two recirculation loop operation and 1.13 for single recirculation loop operation for use during Cycle 7 operation. The derivation of the cycle-specific SLMCPRs was performed using ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–13; U.S. Supplement, EDE–24011–P––A–13–US, August 1996; and the ''Proposed Amendment 25 to GE Licensing Topical Report NEDE–24011–P–A (GESTAR II) on Cycle Specific Safety Limit MCPR.'' Amendment 25 was submitted by General Electric Nuclear Energy (GENE) to the NRC on December 13, 1996.

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established, consistent with NRC approved methods, to ensure that fuel performance during normal, transient, and accident conditions is acceptable.

The probability of an evaluated accident is not increased by revising the SLMCPR

values. The change does not require any physical plant modifications or physically affect any plant components. Therefore, no individual precursors of an accident are affected.

The proposed license amendment establishes a revised SLMCPR that ensures that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences. Specifically, the reload analysis demonstrates that a SLMCPR value of 1.11 (1.13 for single loop operation) ensures that less than 0.1 percent of the fuel rods will experience boiling transition during any plant operation if the limit is not violated.

Based on (1) the determination of the new SLMCPR values using conservative methods, and (2) the operability of plant systems designed to mitigate the consequences of accidents not having been changed;[,] the consequences of an accident previously evaluated have not been increased.

Additionally, updating of the footnote on the SLMCPR value in Technical Specification 2.1.2 to limit the applicability of the SLMCPR values to only Cycle 7 operation will not increase the probability or consequences of accidents previously evaluated. The updating of the footnote on the SLMCPR value in Technical Specification 2.1.2 is an administrative change that has no effect on the probability or consequences of accidents previously evaluated.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license amendment involves a revision of the SLMCPR from 1.09 to 1.11 for two recirculation loop operation and from 1.11 to 1.13 for single loop operation based on the results of analysis of the Cycle 7 core using the same fuel types as in previous fuel cycles, and updating of the footnote on the SLMCPR values in TS 2.1.2. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in the allowable methods of operating the facility. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable methods of operation. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The proposed license amendment establishes a revised SLMCPR value of 1.11 for two recirculation loop operation and 1.13 for single recirculation loop operation for use during Cycle 7 operation. The derivation of the cycle-specific SLMCPRs was performed using ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–13; U.S. Supplement, EDE–24011–P–A–13–US, August 1996; and the ''Proposed Amendment 25 to GE Licensing Topical Report NEDE–24011–P–A (GESTAR II) on Cycle Specific Safety Limit MCPR.'' Amendment 25 was submitted by General Electric Nuclear Energy (GENE) to the NRC on December 13, 1996. Use of these methods ensures that the resulting SLMCPR satisfies the fuel design safety criteria that less than 0.1 percent of the fuel rods experience boiling transition if the safety limit is not violated. Based on the assurance that the fuel design safety criteria will be met, the proposed license amendment does not involve a significant reduction in a margin of safety.

Additionally, updating of the footnote on the SLMCPR value in TS 2.1.2 will not decrease the margin of safety for accidents previously evaluated. The updating of the footnote on the SLMCPR value in Technical Specification 2.1.2 is an administrative change that does not reduce the 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.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: May 27, 1998.

Description of amendment request: The request, if granted, would modify the Technical Specifications to allow the use of various controlled shift structures during a 36 to 48 hour work week. The request will allow the use of up to 12 hour shifts without routine heavy use of overtime.

Basis for proposed no significant hazards consideration determination: 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) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments will delete the TS 6.2.2.f. requirement ''. . . to have operating personnel work a normal 8-hour day, 40-hour week while the plant is operating.'' The proposed change will allow FPL to implement various controlled shift structures and durations during a nominal (36 to 48 hours) work week. The proposed changes will allow the use of up to 12 hour shifts without routine heavy use of overtime. The TS will continue to require the controls and guidelines for work hours to be contained in administrative procedures. The proposed amendments do not involve a change to any structure, system, or component that affects the probability or consequences of an accident previously evaluated. The proposed amendments are administrative in nature and do not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments will not change the physical plant or modes of plant operation and therefore, will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendments will not result in the addition or modification of equipment for any systems, structures, or components at St. Lucie.

The proposed changes modify the controls on working hours for operating personnel without significantly changing the hours worked on a weekly or annual basis, and do not alter the current guidelines on the use of overtime. The changes are administrative in nature. Consequently, operation of either unit in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed amendments will delete the TS 6.2.2.f. requirement ''. . . to have operating personnel work a normal 8-hour day, 40-hour week while the plant is operating.'' The proposed change will allow FPL to implement various controlled shift structures and durations during a nominal (36 to 48 hours) work week. The proposed changes will allow the use of up to 12 hour shifts without routine heavy use of overtime. The TS will continue to require the controls and guidelines for work hours to be contained in administrative procedures. This will result in fewer operating shift-to-shift turnovers per day and will allow more contiguous days off between work shifts. The net result of longer work shifts will be more rested crews with better communications between shifts.

The proposed changes do not alter the current guidelines on the use of overtime and will not alter the basis for any TS that is related to the establishment of, or maintenance of, a nuclear safety margin. Consequently, operation of St. Lucie Units 1 and 2 in accordance with the proposed amendments 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420

NRC Project Director: Frederick J. Hebdon.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389 St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: June 3, 1998

Description of amendment request: The request will modify the Technical Specifications to provide for the use of an interim periodic method of monitoring oxygen concentration in the service waste decay tanks in the event that continuous monitoring capability is lost.

Basis for proposed no significant hazards consideration determination: 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) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendments are administrative in nature and will rectify an inconsistency between Surveillance Requirement 4.11.2.5.1 and the UFSAR that was inadvertently created by previous license amendments. The revisions will reinstate a previously approved conditional exception to the explicit terms of the presently stated TS requirement to continuously monitor the waste gases in the on service Waste Gas Decay Tank, and allow limited system operation using the laboratory gas partitioner to periodically analyze gas samples in the event that continuous monitoring capability becomes inoperable. Limits for potentially explosive mixtures of waste gases have not been altered, and explosive gas monitoring instrumentation does not prevent or mitigate design basis accidents or transients which assume a failure of or a challenge to a fission product barrier. The proposed revisions do not involve any change to the plant accident analyses assumptions, and do not involve accident initiators. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license amendments are administrative in nature and rectify an inconsistency between Technical Specification 4.11.2.5.1 and the UFSAR that was inadvertently created by previous license amendments. The revisions will not change the physical plant or the modes of plant operation defined in the Facility Licenses. The changes do not involve the addition or modification of equipment nor do they alter the design of plant systems. Therefore, operation of either facility in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed license amendments are administrative in nature and rectify an inconsistency between Surveillance Requirement 4.11.2.5.1 and the UFSAR that was inadvertently created by previous license amendments. The revisions will reinstate a previously approved conditional exception to the explicit terms of the presently stated TS requirement to continuously monitor the waste gases in the on service Waste Gas Decay Tank, and allow limited system operation using the laboratory gas partitioner to periodically analyze gas samples in the event that continuous monitoring capability becomes inoperable. Limits for potentially explosive mixtures of waste gases have not been altered, and explosive gas monitoring instrumentation does not prevent or mitigate design basis accidents or transients which assume a failure of or a challenge to a fission product barrier. The proposed changes do not alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. Therefore, operation of either facility in accordance with its proposed amendment would 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan.

Date of amendment requests: March 3, 1998.

Description of amendment requests: The proposed amendments would remove the word ''immediately'' from the Unit 1 hydrogen recombiner surveillance requirement 4.6.4.2.b.4 and revise the Unit 1 and Unit 2 Technical Specification 3/4.6.4 bases.

Basis for proposed no significant hazards consideration determination: 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:

In accordance with 10 CFR 50.92, the proposed changes do not involve a significant hazards consideration if the changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated;
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.

Criterion 1

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change removes an ambiguous word from the technical specification. It does not physically alter the recombiner, nor does it adversely impact its operating characteristics.

The resistance to ground test will continue to be used to detect circuit faults. However, with the removal of the word ''immediately'', it will be possible to conduct the test near the ambient temperature, the temperature for which the 10,000 ohm criterion is applicable. The previously observed resistance value that was lower than 10,000 ohms is not indicative of a faulted heater circuit. Rather, it is the result of an elevated heater temperature and the electrical characteristics of the heater's insulating material, magnesium oxide. Magnesium oxide has a negative electrical resistance temperature coefficient, and it is not unusual or unacceptable for the measured insulation resistance to be less than 10,000 ohms when the heater temperature is elevated.

Criterion 2

This proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The hydrogen recombiner is used to mitigate the consequences of an accident, and it performs no function during normal operation. The change to the surveillance requirement removes an ambiguous word and does not affect the equipment or its installed configuration. No accident initiators that might be introduced by this change have been identified.

Criterion 3

This proposed change does not involve a significant reduction in a margin of safety. The change removes an ambiguous word from the T/S. The performance characteristics for the recombiner are not affected by this change, and no margin of safety is impacted.

The resistance to ground test will continue to be used to detect circuit faults. However, with the removal of the word ''immediately'', it will be possible to conduct the test near the ambient temperature, the temperature for which the 10,000 ohm criterion is applicable. The previously observed resistance values that were lower than 10,000 ohms are not indicative of a faulted heater circuit. Rather, they are the result of an elevated heater temperature and the electrical characteristics of the heater's insulating material, magnesium oxide. Magnesium oxide has a negative electrical resistance temperature coefficient, and it is not unusual or unacceptable for the measured insulation resistance to be less than 10,000 ohms when the heater temperature is elevated.

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 requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085

Attorney for licensee: Jeremy J. Euto, Esq., 500 Circle Drive, Buchanan, MI 49107

NRC Acting Project Director: Dr. Ronald R. Bellamy

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 7, 1998

Description of amendment request: The proposed revision to the Millstone Unit 3 licensing basis would address the addition of the dose from refueling water storage tank (RWST) back leakage into the design basis loss-of-coolant accident (LOCA) analysis and Chapter 15 of the Final Safety Analysis Report (FSAR).

Basis for proposed no significant hazards consideration determination: 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:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve an SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The RWST is a standby system during normal operation, and provides the initial makeup water supply for the Emergency Core Cooling System (ECCS) when actuated in response to a Safety Injection signal. The RWST supply piping does not interface directly with the Reactor Coolant System or associated Reactor Coolant Pressure Boundary piping. All piping, up to and including the last isolation valve prior to the RWST, is rated for pressure exceeding RSS [recirculation spray system] pump discharge pressure.

The RWST is a passive tank, vented to atmosphere. Following swapover to post-LOCA recirculation cooling, the RWST is isolated and is no longer required for accident mitigation purposes. Back leakage will collect in the tank and mix with any remaining volume of water. The temperature of the mixed fluid will not significantly exceed the ambient temperature of the remaining tank volume due to the extremely low leakage rates involved. Because the tank is vented to atmosphere, pressurization of the tank [cannot] occur.

The specific condition of back leakage through the RWST isolation valves in combination with a motor operated valve failure does not contribute to the probability of a malfunction previously evaluated in the Safety Analysis Report. In lines that contain a motor operated valve and result in back leakage to the RWST, there exists another valve in series. The other valve is either another motor operated valve, a check valve, or a manually operated valve. The most limiting single failure assumed is the failure of the lowest leakage series valve to close and results in the maximum calculated leakage rate. Certain ECCS check valves are not subject to single failure consideration and are therefore credited as the barrier valve against back leakage.

The back leakage into the RWST results in sump water entering the RWST when it is at its minimum level. The RWST now becomes a radioactive source and contributes a shine dose to the surrounding areas. The increase in dose rates onsite will not prevent operators from remaining in the control room or from accessing equipment needed to mitigate the accident.

All piping and valves associated with RWST back leakage are located in harsh radiation areas. Backflow from RSS could increase dose rates in the areas where these valves are located. Since these areas are already classified as harsh radiation environments post LOCA, additional dose contributions from these pipes would not adversely impact EEQ [environmental qualification of electrical equipment] doses to vital equipment located in these rooms. Any vital equipment located within would continue to perform its safety function.

The leakage back to the RWST has no effect on the ability of the RSS pumps to perform their design function. The NPSH [net positive suction head] required by the RSS pumps is not adversely impacted by the loss of sump water back to the RWST. The RSS switchover to cold leg recirculation occurs prior to reaching a minimum level of 392,000 gallons in the RWST. Not counting the reactor coolant system volume, 774,000 gallons of water is in the sump. QSS [quench spray system] pumps shut off when the inventory in the RWST decreases to 93,000 gallons. Another 303,000 gallons will reach the sump prior to QSS shutoff. RWST back leakage displaces approximately 36,000 gallons of sump water back into the RWST at the end of 720 hours, leaving more than 1,000,000 gallons, not counting RCS [reactor coolant system] volume, in the sump. When RSS switches over to recirculation, at least 774,000 gallons of water will remain in the sump. After 720 hours, more water resides in the sump than when RSS is started. Therefore minimum NPSH requirements will not be impacted by this leakage.

Post-LOCA back leakage to the RWST has not previously been included in the radiological consequence analyses for Millstone Unit 3. Including this source in dose assessment increases the consequences of the accident. NNECO has tested the associated valves to establish bounding criteria to be used in the analysis of potential radiological consequences. The contribution of the RWST back leakage has been determined to be 2.1 Rem at the LPZ [low population zone] and 0.9 Rem at the Control Room. When combined with the present LOCA analysis radiological consequences, the results remain below the previously analyzed values reported in the FSAR. All dose estimates reflect the limiting exposure which, in this case, is Thyroid dose. All resultant doses are less than 10CFR100 and GDC [General Design Criterion] 19 limits to offsite and control room.

Back leakage to the RWST from the operation of RSS is a result of a LOCA. It cannot increase the probability of a LOCA. Therefore RWST back leakage does not increase the probability of an accident previously evaluated.

Based on the above, the proposed license amendment request does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new condition potentially impacting the ability to mitigate the accident is created by the back leakage. The low leakage rates from these valves occurs over [an] extended period of time during which other makeup water sources can be brought into service to account for lost inventory, if necessary.

Therefore, the proposed license amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The resultant dose from back leakage of ECCS valves to the RWST does not reduce the Margin of Safety. The offsite and control room doses, with the addition from RWST back leakage, remain below the licensing

base dose as listed in the SAR [safety analysis report]. Technical Specification 6.8.4 defines the basis for the leak reduction program. The basis for the program is to reduce leakage outside containment to the maximum extent possible. The Technical Specifications do not define the maximum amount of leakage or the origin of the leakage. The addition of the back leakage valves to the leak reduction program does not reduce the Margin of Safety.

Therefore, the proposed license amendment request does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

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.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 5, 1998

Description of amendment request: The proposed revision to the Millstone Unit 3 licensing basis would address a recent steam generator tube rupture (SGTR) analysis that was determined to be an unreviewed safety question. The SGTR analyses described in the Final Safety Analysis Report (FSAR) include an offsite dose analysis and a margin to overfill analysis. Both of the analyses have been updated. The offsite dose analysis was updated to reflect a larger capacity for the steam generator atmospheric dump valve, and the margin to overfill analysis was updated to reflect a new single failure.

Basis for proposed no significant hazards consideration determination: 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:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve an SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The FSAR Steam Generator Tube Rupture offsite dose analysis is being updated to reflect a larger capacity for the steam generator atmospheric dump valve. The updated analysis, as well as the current FSAR analysis, postulate the failure, in the open position, of the steam generator atmospheric dump valve associated with the steam generator with the ruptured tube. Revising the analyses does not impact the failure probability of the steam generator atmospheric dump valve. The SGTR analyses credit closure of the atmospheric dump valve block valve to isolate the failed open atmospheric dump valve. The revised SGTR analysis uses a larger flow capacity for the atmospheric dump valve. A larger flow capacity, without other changes being made, would increase the consequences associated with this failure. However, the time credited for closure of the block valve is being reduced to 20 minutes after the atmospheric dump valve fails open, instead of 30 minutes after the atmospheric dump valve fails open. A shorter isolation time, without other changes being made, would decrease the consequences associated with the atmospheric dump [valve] failing open. This faster isolation time more than compensates for the larger capacity assumed for the atmospheric dump valve. Therefore, the revised analyses does not increase the consequences of a Steam Generator Tube Rupture. The change is a revision to the analyses for a steam generator tube rupture and the description of the analyses in the FSAR. Changing the analyses and its description [cannot] cause an increase in the probability of a steam generator tube rupture.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The change is to the analyses and FSAR description of that analyses. The important changes in the analyses are the increased capacity of the atmospheric dump valve and the shorter time utilized for isolation of the failed open atmospheric dump valve. The only change in equipment credited in the analyses is the crediting of the block valve to close when there is a larger flow through the valve. The block valve can close under the postulated accident conditions.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The revised analyses reduces the time available to the Operators to isolate the failed open atmospheric dump valve from 30 minutes to 20 minutes. The actions required are unchanged. The twenty minutes allows sufficient time for the Operators to both recognize the failure of the atmospheric dump valve and to close the block valve. However, reducing the available time to the Operators from 30 minutes to 20 minutes represents a reduction in the margin for error available to the Operators and thus represents a reduction in the margin of safety. The reduction in the margin of safety is not significant since the twenty minutes allowed by the analysis is still significantly above the typical ten minute minimum assumed response time for Operator actions performed in the control room. In addition, Operator training provides assurance that the twenty minute time limit is met.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

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.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 6, 1998.

Description of amendment request: The proposed revision to the Millstone Unit 3 licensing basis relates to operation of the supplementary leak collection and release system (SLCRS) after a postulated accident. Specifically, the proposed revision to the Final Safety Analysis Report (FSAR) would address (1) the manual actions required to trip the non-nuclear safety grade fans and time requirements for control room ventilation realignment, and (2) the input assumptions and results of the new loss-of-cooling accident/control rod ejection accident analyses.

Basis for proposed no significant hazards consideration determination:

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:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The potential condition of radioactive effluent bypassing the isolated boundary in the Supplemental Leak Collection and Release System after an accident cannot contribute to the probability of an accident previously evaluated. The leakage is caused by a postulated failure of the non-nuclear safety grade exhaust fans within the SLCRS boundary to trip after a safety injection signal. Operator action is needed to verify that the fans in question are tripped within a predetermined time delay after the accident in order that credit can be taken in the radiological dose analysis for the isolation of this source.

The proposed operator action will verify that the power to the fan motors is terminated, which cannot create any conditions leading to a new accident. The verification will augment the procedure to minimize the consequences of the accident itself. The trip circuits of the fan motors do not interface with safety systems.

The consequences of the limiting design basis accidents have been evaluated with the additional bypass leakage. The doses for the Exclusion Area Boundary, Low Population Zone and Unit 3 Control room remain below the previously calculated and approved licensing values. The calculated doses for the Technical Support Center are higher than previously approved, but below the radiological acceptance criteria of GDC [General Design Criterion] 19.

Therefore, the proposed license amendment does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no conceivable conditions, created by the proposed operator action, that may lead to the possibility of a new accident. Interruption of power to the exhaust fans is, in itself, a part of accident mitigating activity. The proposed activity cannot create an adverse environment where a possibility of a new accident has to be considered.

The breakers used to de-energize the fans, control only the fan motors and no other equipment. Clear labeling ensures that no safety equipment is inadvertently de-activated. The revised ventilation system operating procedure will clearly specify the order of steps and confirmatory indicators necessary for safe shutdown of the exhaust fans. The equipment operator will be briefed before proceeding to open the breakers to the affected fan motors. To minimize the possibility of an error, this step will be done early in the sequence of procedural steps performed to re-align the control room ventilation system to the filtration/recirculation mode of operation after an accident.

Therefore, the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

In considering the impact of the proposed revision on the margin of safety, as defined in the Technical Specifications, the impact on the design basis analysis of the fission product barriers must be evaluated.

The proposed operator action to trip the fans is done as part of personnel protective actions after a major accident, which is to stop the distribution of radioactive iodine into the vital areas through the ventilation system within a predetermined time. The maintenance of the fission product barriers is not affected by this action. This potential source of radioactivity associated with the ventilation fans discharging through the closed SLCRS boundary dampers has not been considered previously in the dose analysis. Including this source results in a small increase in the gamma and beta doses to the Technical Support Center. The GDC 19 limits for protection of personnel in the vital areas however, are not violated. The calculated doses to EAB/LPZ [exclusion area boundary and the low population zone] zones and to the control room vital area remain below the current licensing base values.

Therefore, the proposed license amendment request does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

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.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388; Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 23, 1998.

Description of amendment request: The amendment would update the operating licenses such that the corporate name of Pennsylvania Power and Light Company ''be changed to PP&L, Inc.''

Basis for proposed no significant hazards consideration determination: 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 the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This request involves an administrative change only. The Operating Licenses (OLs) are being changed to reference the new corporate name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, this request will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This request involves an administrative change only. The OLs are being changed to reference the new corporate name of the licensee. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, this request will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

3. Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves an administrative change only. The OLs are being changed to reference the new corporate name of the licensee.

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed change will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation. Therefore, this request will not impact 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.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

Philadelphia Electric Company, Docket No. 50–171, Peach Bottom Atomic Power Station, Unit 1, York County, Pennsylvania

Date of application for amendment: March 2, 1998

Brief description of amendment: This proposed amendment will revise the Peach Bottom Atomic Power Station, Unit 1, Technical Specifications (TS) to include requirements for control of effluents and annual reporting in accordance with the requirements of 10 CFR 50.36a.

Basis for proposed no significant hazards consideration determination: 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:

a. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes do not impact the SAFSTOR status of Unit 1 or the design of any plant system, structure, or component (SSC). These changes are administrative in nature. They do not affect security at Unit 1 or the potential of radioactive material being released. Inspections for potential liquid and gas effluents have previously been established. These changes ensure the requirement for procedures and reporting are listed in TS. Therefore, these proposed changes do not increase the probability or consequences of an accident previously evaluated.

b. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because implementation of the proposed changes do not involve any physical changes to plant SSC or impact the SAFSTOR status. The changes are administrative in nature. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

c. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed changes do not involve a significant reduction in a margin of safety because the proposed changes do not affect the plant SAFSTOR status. Because proposed changes are administrative in nature, they do not involve a question of safety. These changes involve reporting and adding a requirement that procedures be in place for effluent monitoring. Therefore, the proposed changes do 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Branch Chief: John W. N. Hickey.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 13, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.10.8, ''Inservice Leak and Hydrostatic Testing,'' to delete the requirement for an operable High Drywell Pressure trip function. Specifically, TS 3.10.8.a is being revised to remove the reference to the Secondary Containment Isolation Actuation Instrumentation trip function 2.b.

Basis for proposed no significant hazards consideration determination: 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) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS revisions will continue to allow the performance of inservice leak and hydrostatic testing at a reactor coolant temperature of greater than 200 degrees Fahrenheit but less than or equal to 212 degrees Fahrenheit while considering the plant to remain in Operational Condition 4; however, the requirement to have an operable ''High Drywell Pressure'' Secondary Containment Isolation trip function during a leak or hydrostatic test is being deleted. This change will not have an impact on the consequences of an accident previously evaluated since the tests will continue to be performed nearly water solid and with all control rods fully inserted. The stored energy in the reactor core and coolant will continue to be very low and the potential for causing fuel failures with a subsequent increase in coolant activity will continue to be minimal. The remaining restrictions provided in Special Test Exception 3.10.8 requiring Secondary Containment Integrity and Filtration, Recirculation and Ventilation System (FRVS) operability will continue to provide assurance that potential releases into secondary containment will be restricted from direct release to the environment. With the reactor coolant continued to be limited to 212 degrees Fahrenheit, there will be little or no flashing of coolant to steam, and any release of radioactive materials will be minimized.

In the event of a large primary system leak, the reactor vessel will rapidly depressurize, allowing the low pressure Emergency Core Cooling Systems (ECCS) to operate. The capability of the required ECCS in Operational Condition 4 remains adequate to maintain the core flooded under these conditions. Small system leaks will continue to be detected by leakage inspections, which are an integral part of the inservice leak and hydrostatic testing programs, before any significant inventory loss can occur. In addition, the ''High Drywell Pressure'' Secondary Containment Isolation trip function (TS Table 3.3.2–1, Trip Function 2.b) provides no additional protection against the events of concern during the inservice leak and hydrostatic tests. As a result, these changes will not increase the probability of an accident previously evaluated nor significantly increase the consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to Special Test Exception 3.10.8 contained in this submittal will not adversely impact the operation of any safety related component or equipment. Since the proposed changes involve no hardware changes and no changes to existing structures, systems or components, there can be no impact on the potential occurrence of any accident due to new equipment failure modes. The remaining restrictions provided in proposed Special Test Exception 3.10.8 requiring Secondary Containment Integrity and Filtration, Recirculation and Ventilation System (FRVS) operability will continue to function as required, which will provide assurance that potential releases into secondary containment will be restricted from direct release to the environment. Furthermore, there is no change in plant testing proposed in this change request that could initiate an event. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS revisions will still allow the performance of inservice leak and

hydrostatic testing at a reactor coolant temperature of greater than 200 degrees Fahrenheit but less than or equal to 212 degrees Fahrenheit while considering the plant to remain in Operational Condition 4; however, the requirement to have an operable ''High Drywell Pressure'' Secondary Containment Isolation trip function during a leak or hydrostatic test is being deleted. Since the reactor vessel head will remain in place, secondary containment will continue to be maintained, sufficient isolation actuation instrumentation will be maintained and all systems required in Operational Condition 4 will continue to be operable in accordance with the TS, the proposed changes will not have any significant impact on any design basis accident or safety limit. Since Hope Creek will still remain capable of meeting all applicable design basis requirements and retaining the capability to mitigate the consequences of accidents described in the UFSAR, the proposed changes contained in this submittal were determined to not result in 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.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: Robert A. Capra.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 12, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Limiting Condition for Operation (LCO) sections 3.7.1.1, 3.7.1.2, and 3.7.1.3. Specifically, the proposed changes implement more appropriate Ultimate Heat Sink (UHS) limits for river water temperature, which increases operational flexibility. In addition, the Station Service Water System (SSWS) and Safety Auxiliaries Cooling System (SACS) TS Action Statements are being revised to provide additional restrictions on continued plant operation. These revisions provide explicit TS guidance, which maintains SSWS/SACS operating configurations within design analysis assumptions.

Basis for proposed no significant hazards consideration determination: 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) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

LCO 3.7.1.3 Changes

The proposed TS revisions related to UHS involve no hardware changes and no changes to existing structures, systems or components. The UHS and supported system temperature and configuration limits ensure that the UHS can remove required heat loads during design basis accidents and transients with the proposed UHS river water temperature limits. The proposed UHS TS ACTION Statements ensure that the plant is directed to enter a safe shutdown condition whenever the capability to mitigate design basis accidents and transients is lost. The existing UHS TS surveillance requirements to increase monitoring of the river water temperature at 82°F adequately ensures that the actions required at elevated river water temperature conditions are taken as appropriate. Since the UHS will still remain capable of meeting all applicable design basis requirements and retaining the capability to mitigate the consequences of accidents described in the [Hope Creek] HC [Updated Final Safety Analysis Report] UFSAR, the proposed changes were determined to be justified. As a result, these changes will not increase the probability of an accident previously evaluated nor significantly increase the consequences of an accident previously evaluated.

LCO 3.7.1.1 and 3.7.1.2 Changes

The proposed TS revisions related to SSWS/SACS operating configuration restrictions involve no hardware changes and no changes to existing structures, systems or components. The additional restrictions requiring: 1) SACS heat exchanger operability in one SSWS/SACS pump per loop scenarios; and 2) assessments of SACS loop operability when a SSWS loop is declared inoperable; ensure that the SSWS/SACS can remove required heat loads during design basis accidents and transients with the proposed UHS river water temperature limits contained in this submittal. The proposed SSWS/SACS TS ACTION Statements ensure that the plant is directed to enter a safe shutdown condition whenever the capability to mitigate design basis accidents and transients is lost. Since SSWS/SACS will still remain capable of meeting all applicable design basis requirements and retaining the capability to mitigate the consequences of accidents described in the HC UFSAR, the proposed changes were determined to be justified. As a result, these changes will not increase the probability of an accident previously evaluated nor significantly increase the consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

LCO 3.7.1.3 Changes

The proposed changes to the UHS TS contained in this submittal will not adversely impact the operation of any safety related component or equipment. Since the proposed changes involve no hardware changes and no changes to existing structures, systems or components, there can be no impact on the potential occurrence of any accident due to new equipment failure modes. The system configuration limits imposed by the UHS LCO ensure that supported systems can remove required heat loads during design basis accidents and transients with the proposed UHS river water temperature limits. Furthermore, there is no change in plant testing proposed in this change request that could initiate an event. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

LCO 3.7.1.1 and 3.7.1.2 Changes

The proposed changes to the SSWS/SACS TS contained in this submittal will not adversely impact the operation of any safety related component or equipment. Since the proposed changes involve no hardware changes and no changes to existing structures, systems or components, there can be no impact on the potential occurrence of any accident due to new equipment failure modes. The system configuration limits imposed by the SSWS/SACS LCOs ensure that systems can remove required heat loads during design basis accidents and transients with the proposed UHS river water temperature limits. Furthermore, there is no change in plant testing proposed in this change request that could initiate an event. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

LCO 3.7.1.3 Changes

The proposed changes for the TS related to the UHS ensure continued capability of the UHS to mitigate the consequences of design basis accidents and transients. The UHS supported systems' configuration limits and changes to the operating limits of the UHS ensure that the UHS can remove required heat loads during design basis accidents and transients with the proposed river water temperature limits. The proposed UHS TS ACTION Statements ensure that the plant is directed to: 1) enter a safe shutdown condition whenever the capability to mitigate design basis accidents and transients is lost; or 2) enter a conservatively short period of continued operation when supported system redundancy is reduced. Since the UHS will still remain capable of meeting all applicable design basis requirements and retaining the capability to mitigate the consequences of accidents described in the HC UFSAR, the proposed changes contained were determined to not result in a significant reduction in a margin of safety.

LCO 3.7.1.1 and 3.7.1.2 Changes

The proposed changes for the TS related to the SSWS/SACS ensure continued capability of these systems to mitigate the consequences

of design basis accidents and transients. The proposed configuration limits ensure that the safety-related heat removal systems can perform their safety functions during design basis accidents and transients with the proposed river water temperature limits. The SSWS/SACS TS ACTION Statements ensure that the plant is directed to: 1) enter a safe shutdown condition whenever the capability to mitigate design basis accidents and transients is lost; or 2) enter a conservatively short period of continued operation when supported system redundancy is reduced. Since the SSWS/SACS will still remain capable of meeting all applicable design basis requirements and retaining the capability to mitigate the consequences of accidents described in the HC UFSAR, the proposed changes contained were determined to not result in 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.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: Robert A. Capra.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 7, 1998.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to reflect reactor coolant system flow differences between the existing Model E and the replacement Delta 94 steam generators (SGs). Specifically, it would (1) add a new reactor core safety limit figure in TS 2.1.1, Reactor Core Safety Limits, that shows curves that are a function of core temperature, power and operating pressure, applicable to the Delta 94 SGs, (2) add a footnote in TS Table 2.2–1, Reactor Trip System Instrumentation Trip Setpoints, to specify a new design loop flow rate applicable to the Delta 94 SGs, and (3) add a new flow rate requirement to TS 3.2.5, Departure from Nucleate Boiling (DNB) Parameters, applicable to the Delta 94 SGs. Related changes to the TS Bases were also proposed for Bases 2.1.1, Reactor Core Safety Limits, and Bases 3/4.2.5, DNB Parameters.

Basis for proposed no significant hazards consideration determination: 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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes are necessary to reflect new conditions associated with replacement of the steam generators. The differences in the replacement steam generators only require small changes to parameters modeled in existing accident analyses. Accident analyses affected by the replacement steam generator parameter changes have each been evaluated to establish that there is no significant change in the documented results. In cases where an evaluation was not adequate, new analyses have been performed to verify that there is no significant change in the consequences of the affected accidents.

The Technical Specification changes specify new requirements (i.e., changed RCS [reactor coolant system] flow) which support the new and existing accident analyses. The accident analysis performed for these new requirements determined that neither the probability, nor the consequences, of accidents previously evaluated in the UFSAR [Updated Final Safety Analysis Report] would be increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification changes are necessary to reflect new conditions associated with replacement of the steam generators. The differences in the replacement steam generators only require small changes to parameters modeled in existing accident analyses. The replacement of the original steam generators with new Model Delta 94 steam generators improves the structural integrity of the steam generator tubes. The improved structural integrity of the new steam generators does not increase the possibility of a new or different kind of accident from any accident previously evaluated such as a multiple steam generator tube rupture event.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not alter the manner in which Safety Limits, Limiting Safety System Setpoints, or Limiting Conditions for Operations are determined. Changes in parameters assumed in safety analyses associated with replacement of the steam generators have been analyzed and new Technical Specification limits are proposed. The new limits proposed for SL [Safety Limit] 2.1.1, ''Reactor Core''; Table 2.2–1, ''Reactor Trip System Instrumentation Trip Setpoints''; and LCO [Limiting Condition for Operation] 3.2.5, ''DNB [Departure from Nucleate Boiling] Parameters'' maintain or improve the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 1, 1998.

Description of amendment request: The proposed amendment would revise the minimum steam generator (SG) tube roll expansion distances for the F* and elevated F* (EF*) repair criteria that were approved in Amendment 129.

Basis for proposed no significant hazards consideration determination: 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:

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated.

The changes to the minimum engagement lengths for F* and EF* do not change any of the conclusions of the original F* and EF* analyses. The technical justification for the repair criteria has not changed due to changes in the engagement lengths. The calculated engagement lengths continue to preclude tube pullout and rupture during all postulated conditions. Based on the geometry of the Model 51 SG, tube rupture type release rates are not expected for a postulated failure at an F* or EF* repair location. Engagement lengths were calculated such that structural integrity of the repaired tube meets the RG [Regulatory Guide] 1.121 requirements. Therefore, application of the new F* and EF* distances will not increase the probability of an accident previously evaluated.

The new calculated engagement lengths continue to preclude primary to secondary leakage during all conditions. Leakage for both F* and EF* remains negligible at normal operating conditions. The amount of leakage expected at faulted conditions from F* and EF* repaired tubes remains a small percentage of the maximum allowable leak rate during a[n] SLB [steamline break] and is considered negligible. Therefore, it can be concluded that leakage will be restricted such that off-site doses will not exceed a small fraction of 10 CFR part 100 and control

room doses will not exceed GDC [General Design Criterion] 19 criteria. Therefore, the proposed change to the F* and EF* distances will not increase the consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

Implementation of the proposed changes in F* and EF* distances does not introduce any significant changes to the plant design basis. As with the original acceptance of the amendment for using the original F* and EF* criteria, use of the proposed F* and EF* engagement lengths will not introduce a mechanism that will result in an accident initiated outside of the tubesheet crevice region. As previously discussed, the structural integrity of F* and EF* tubes will be maintained during all plant conditions. Any hypothetical accident as a result of tube degradation in the tubesheet crevice region of the tube will be bounded by the existing tube rupture analysis. Therefore, implementation of the proposed engagement lengths for F* and EF* will not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety.

The calculation for the new F* and EF* minimum engagement lengths used the same methodology as the original F* and EF* analysis. The only change was the assumed normal operating primary to secondary differential pressure. The new assumed differential pressure is the design differential pressure for the KNPP [Kewaunee Nuclear Power Plant] SGs. The calculation for the engagement lengths continues to use the appropriate safety factors from RG 1.121. The revised F* and EF* engagement lengths continue to preclude tube pullout at all plant conditions and to maintain the structural integrity of the tube. Additionally, primary to secondary leakage during all plant conditions is precluded as described in the preceding sections. Since the structural and leakage integrity is not changed by the proposed changes in engagement length, the margin of safety is not significantly reduced.

Additionally, use of the F* and EF* repair criteria will decrease the number of tubes removed from service by plugging or repaired by sleeving. Since both plugging and sleeving reduce reactor coolant flow margin, implementation of the F* and EF* repair criteria helps to maintain that flow margin.

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.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Acting Project Director: Ronald R. Bellamy.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: February 2, 1998, as supplemented February 18, 1998.

Description of amendment request: The proposed amendments would revise the wording to specify refueling outage surveillances. The changes clarify that these surveillances are to be performed on an 18-month frequency and need not be constrained to refueling outage conditions.

Date of publication of individual notice in **Federal Register**: February 10, 1998 (63 FR 6784).

Expiration date of individual notice: For comments February 24, 1998; For hearing March 12, 1998.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Duke Energy Corporation, Docket Nos. 50–269 and 50–287, Oconee Nuclear Station, Units 1 and 3, Oconee County, South Carolina

Date of amendment request: June 4, 1998.

Description of amendment request: The proposed amendments would revise Technical Specification 4.17.2 to allow continued operation with certain steam generator tubes that exceed their repair limit as a result of tube end anomalies. This action temporarily exempts these tubes from the requirement for sleeving, rerolling, or removal from service until they are repaired during or before the next scheduled refueling outages for the respective unit.

Date of publication of individual notice in **Federal Register**: June 17, 1998 (63 FR 33097).

Expiration date of individual notice: For comments July 1, 1998; For hearing July 17, 1998.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 6 and December 11, 1996, April 11, May 1, August 14, October 15, November 5 and 14, December 3, 4, 15, 22, 23, 29 and 30, 1997, January 23, March 12 and 13, April 16, 20 and 28, May 7, 14 and 19, and June 2, 1998.

Brief description of amendments: Conversion to Standard Improved Technical Specifications (TSs). Supplements requested less restrictive changes to the planned conversion. These changes involve (1) plant-specific application of generically approved methodology supporting extended instrument surveillance intervals and allowed outage times, (2) operating practice to treat secondary containment as a single zone, (3) TS changes to support installation of a Power Range Neutron Monitoring System, Average Power Range Monitor and Rod Block Monitor TS improvements, and the Maximum Extended Load Line Limit analysis, (4) TSs to specify reactor vessel water level should be greater than the top of the irradiated fuel, (5) reflect plant-specific design condition that excludes average U–235 enrichment, (6) all spiral off-load procedures and adopt revision to Surveillance Requirement (SR). Also, changes to (1) SR relating to core reactivity difference between actual and expected critical rod configuration, (2) calibration frequency for local power range monitors and (3) an alternate SR for Unit 3 for position verification of the low pressure core injection cross tie valves.

Date of publication of individual notices in the **Federal Register**: June 1, 1998 (63 FR 29763), and June 12, 1998 (63 FR 32252).

Expiration dates of individual notices: July 1, 1998 (63 FR 29763) and July 13, 1998 (63 FR 32252).

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: October 1, 1997, as supplemented October 14, 1997, March 16, April 1 and 28, May 1 and 20, 1998.

Brief description of amendments: Change Technical Specifications to allow operation at the uprated power level of 3458 MWt which represents a power level increase of 5 percent.

Date of publication of individual notice in the **Federal Register**: June 9, 1998 (63 FR 31533).

Expiration date of individual notice: July 9, 1998.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: March 25, 1998, as supplemented on April 8, and May 5, 1998.

Brief description of amendment: The amendment modifies the Pilgrim Nuclear Power Station Technical Specification Section 3.6.A.1 with respect to the monitoring requirements for the vessel flange and adjacent shell differential temperature during heatup and cooldown and removes the 145 °Fahrenheit differential temperature limit.

Date of issuance: June 19, 1998.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 175.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 28, 1998 (63 FR 23304). The May 5, 1998, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: July 15, 1996, as supplemented on June 19, 1997, and February 2, 1998.

Brief description of amendments: The amendments relocate requirements related to fire protection from the Technical Specifications (TS) to the Updated Final Safety Analysis Report. The TS sections to be relocated are: 3/4.3.7.9, Fire Detection Instrumentation; 3/4.7.5, Fire Suppression Systems; 3/4.7.6, Fire Rated Assemblies; and 6.1.C.4, Fire Brigade Staffing. The amendments also replace License Condition 2.C.(25) for Unit 1 and License Condition 2.C.(15) for Unit 2.

Date of issuance: June 10, 1998.

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 127 and 112.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the operating licenses and the Technical Specifications.

Date of initial notice in **Federal Register**: September 25, 1996 (61 FR 50340). The June 19, 1997, and February 2, 1998, supplements clarified the license conditions by providing specific approval dates for previous fire protection safety evaluations. This information was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 13, 1998, as supplemented March 30, 1998.

Brief description of amendment: The amendment revises the auxiliary feedwater system technical specification to allow two auxiliary feedwater flow control valves in one train to be inoperable for up to 72 hours.

Date of issuance: June 10, 1998.

Effective date: June 10, 1998.

Amendment No.: 183.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 22, 1998 (63 FR 19967) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423–3698

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: May 20, 1998 (NRC–98–0099)

Description of amendment request: The amendment revises the action specified in Technical Specification 3.1.3.1, ''Control Rod Operability,'' by changing the action statements associated with the scram discharge volume vent and drain valves to align with those in the NUREG–1433, Revision 1, ''Standard Technical

Specifications General Electric Plants, BWR/4.''

Date of issuance: June 12, 1998.

Effective date: June 12, 1998.

Amendment No: 120.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards considerations (NSHC): Yes (63 FR 29254 dated May 28, 1998). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by June 29, 1998, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated June 12, 1998.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 22, 1998.

Brief description of amendments: The amendments revise Surveillance Requirement Section 4.4.3.3 of each unit's Technical Specification to be consistent with the plant design; specifically, deleting the reference to manual transfer of power supply from normal to emergency.

Date of issuance: June 17, 1998.

Effective date: As of the date of issuance.

Amendment Nos.: Unit 1—166; Unit 2—158.

Facility Operating License Nos. NPF–35 and NPF–52: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. (63 FR 29759 dated June 1, 1998). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by July 1, 1998, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendments.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and final no significant hazards consideration determination are contained in a Safety Evaluation dated June 17, 1998.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Herbert N. Berkow.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 20, 1998.

Brief description of amendment: The amendment revised the Improved Technical Specification 5.6.2.8 to reflect the current schedule for performing the required reactor coolant pump flywheel inspection.

Date of issuance: June 8, 1998.

Effective date: June 8, 1998.

Amendment No.: 167.

Facility Operating License No. DPR–31: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 6, 1998 (63 FR 25110).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: November 22, 1996, as revised and replaced February 2, 1998.

Brief description of amendments: The amendments revise the Technical Specifications (TS) to allow for the installation of a temporary fuel oil storage and transfer system in order to maintain the operability of one Unit 3 emergency diesel generator during the performance of a required surveillance to clean the permanent fuel oil storage tank.

Date of issuance: June 9, 1998.

Effective date: June 9, 1998.

Amendment Nos.: 197 and 191.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the TS.

Date of initial notice in **Federal Register**: February 25, 1998 (63 FR 9604).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 23, 1998.

Description of amendment request: The proposed change would revise the Seabrook Station Technical Specifications (TSs) to add a new TS 3.0.5 that would provide an exception to TSs 3.0.1 and 3.0.2 to allow the performance of required testing to demonstrate the operability of the equipment being returned to service or the operability of other equipment.

Date of issuance: June 16, 1998.

Effective date: As of its date of issuance, to be implemented within 60 days.

Amendment No.: 57.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 22, 1998 (63 FR 19972)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut.

Date of application for amendment: December 8, 1997.

Brief description of amendment: The changes modify the Technical Specifications to resolve several compliance issues by rewording of the text, changing terminology, correcting a

mode applicability, correcting a formula, updating the Design Features section, and updating the Bases section to reflect the changes.

Date of issuance: June 16, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 216.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 28, 1998 (63 FR 4319).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 14, 1997, as supplemented by letters dated October 9, 1997, March 31, 1998, and April 15, 1998.

Brief description of amendments: The amendments revised the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 to change the surveillance frequencies from at least once every 18 months to at least once per refueling interval (nominally 24 months) for (1) eight slave relays, (2) 20 electrical system tests, (3) one electrical Bases change, and (4) five miscellaneous tests.

Date of issuance: June 5, 1998.

Effective date: June 5, 1998, to be implemented within 90 days from the date of issuance.

Amendment Nos.: Unit 1—126; Unit 2—124.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 26, 1997 (62 FR 14466). The October 9, 1997, March 31, 1998, and April 15, 1998, supplemental letters provided additional information and did not change the staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 5, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: January 27, 1998.

Brief description of amendments: These amendments revise Table 3.6.3–1 of the Technical Specifications by removing the isolation time for the high pressure coolant injection turbine exhaust valves and adding a notation that the isolation is not required.

Date of issuance: June 16, 1998.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment Nos.: 129 and 90.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 11, 1998 (63 FR 11921).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: June 25, 1997, as supplemented by letter dated June 2, 1998.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) to allow for up to +17½ steps of control rod misalignment when power is greater than 85%.

Date of issuance: June 17, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 180.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 27, 1997 (62 FR 45461)

The June 2, 1998, supplement provided a clarification to the wording of the TSs and did not change the staff's proposed finding of no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: September 3, 1997.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) by revising the number of hours operating personnel can work in a normal shift. The proposed amendment also contains some administrative changes to the TS.

Date of issuance: June 17, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 181

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54875).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 13, 1998 (TS 97–03).

Brief description of amendments: The amendments change the Technical Specifications by adding a new Limiting Condition for Operation 3.7.1.6 that addresses the requirements for the main feedwater isolation valve functions required by the Sequoyah Nuclear Plant accident analysis.

Date of issuance: June 8, 1998.

Effective date: As of the date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: Unit 1–232; Unit 2–222.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: April 22, 1998 (63 FR 19979).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 101 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: April 29, 1998.

Brief description of amendment: The requested changes would allow, temporarily, both trains of hydrogen igniters to be declared inoperable for up to 72 hours.

Date of issuance: June 9, 1998.

Effective date: June 9, 1998.

Amendment No.: 10.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: May 7, 1998 (63 FR 25243).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1998.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: August 26, 1997.

Brief description of amendment: This amendment changed Technical Specification (TS) Section 3/4.2, ''Power Distribution Limits.'' The departure from nucleate boiling parameters limiting condition for operation was modified due to an industry notification.

Date of issuance: June 11, 1998.

Effective date: June 11, 1998.

Amendment No.: 222.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 8, 1997 (62 FR 52590)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 11, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: August 26, 1997.

Brief description of amendment: This amendment revises Technical Specification (TS) Section 3/4.6.1.3, ''Containment Systems—Containment Air Locks,'' and the associated bases. The limiting condition for operation and the surveillance requirements were modified. The application also proposed a change to TS Bases 3/4.9.4, ''Refueling Operations—Containment Penetrations.'' That bases change was approved by letter dated March 19, 1998.

Date of issuance: June 11, 1998.

Effective date: June 11, 1998.

Amendment No.: 223.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54876)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 11, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: December 18, 1997.

Brief Description of amendments: These amendments revise the Technical Specifications (TS) to clarify the terminology used for describing equipment surveillances performed on a refueling interval frequency, and to use consistent wording.

In two cases the proposed changes are denied. These two exceptions, TS 4.6.A.1.b and 4.6.C.1.e, do not include required specific Mode restrictions and could not be approved at this time. If appropriate revisions are submitted, these two exceptions could be found to be acceptable at a later time.

Date of issuance: June 11, 1998.

Effective date: June 11, 1998.

Amendment Nos.: 213 and 213.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register**: May 6, 1998 (63 FR 25118).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 11, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: November 5, 1997, as supplemented January 28, 1998 and May 12, 1998.

Brief Description of amendments: These amendments permit an increase in the maximum allowable fuel enrichment for core reloads from 4.1 to 4.3 weight percent U^{235}.

Date of issuance: June 19, 1998.

Effective date: June 19, 1998.

Amendment Nos.: 214 and 214.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register**: December 31, 1997 (62 FR 68320)

The January 28 and May 12, 1998 submittals provided clarifying information that did not affect the initial no significant hazards determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 19, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: March 25, 1998.

Brief Description of amendments: These amendments revise the Technical Specifications to change certain management titles. There is no change in duties or responsibilities proposed. Specifically, the Station Manager's title is changed to Site Vice President. The title of Assistant Station Manager Operations and Maintenance is changed to Manager-Operations and Maintenance. The title of Assistant Station Manager Nuclear Safety and Licensing is changed to Manager-Station Safety and Licensing.

Date of issuance: June 19, 1998.

Effective date: June 19, 1998.

Amendment Nos.: 215 and 215.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register**: May 6, 1998 (63 FR 25119) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 19, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: October 13, 1997, supplemented on February 10, 1998.

Brief description of amendment: The amendment involves miscellaneous changes to the TS to (1) relocate information to the Updated Safety Analysis Report (USAR), (2) delete redundant information, (3) incorporate new references, (4) delete incorrect references, (5) correct errors, and (6) augment existing requirements.

Date of issuance: June 9, 1998.

Effective date: June 9, 1998.

Amendment No.: 137.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 8, 1998 (63 FR 11926).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: September 5, 1997 and March 30, 1998.

Brief description of amendment: Revises Technical Specifications and bases in order to allow loads of up to 80-tons to travel over the spent fuel pool.

Date of issuance: June 17, 1998.

Effective date: June 17, 1998.

Amendment No.: 149.

Facility Opertating (Possession Only) License No. DPR–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54879) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Dated at Rockville, Maryland, this 24th day of June 1998.

For The Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 98–17352 Filed 6–30–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (GST Telecommunications, Inc., Common Shares, Without Par Value) File No. 1–12866

June 24, 1998.

GST Telecommunications, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commssion''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified Security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Board of Directors of the Company, at a meeting held on March 4 and 5, 1998, unanimously approved resolutions to withdraw the Security from listing on the Amex and, instead, to list such Security on the Nasdaq National Market (''Nasdaq''). The Board of Directors, after lengthy deliberation, determined that, since all other telecommunications companies in the Company's industry segment have their shares listed for trading on Nasdaq, it would be in the best interest of the Company and its shareholders to have the Security listed on Nasdaq rather than the Amex.

The Company has complied with Amex Rule 18 by notifying the Amex of its intention to withdraw its Security from listing by letter dated March 27, 1998. The Amex replied by letter dated April 7, 1998, advising it would not interpose any objection to such withdrawal. The Amex suspended trading of the Security at the close of business on Monday, April 13, 1998, and the Security commenced trading on Nasdaq on Tuesday, April 14, 1998. The Company has filed an amended registration statement on Form 8–A to register the Security under Section 12(g) of the Act.

By reason of Section 12(g) of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports with the Commission under Section 13 of the Act.

Any interested person may, on or before July 16, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–17436 Filed 6–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (M&T Bank Corporation (Formerly First Empire State Corporation), Common Stock, $5.00 Par Value) File No. 1–9861

June 24, 1998.

M&T Bank Corporation [1] (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

[1] The Company's former name was ''First Empire State Corporation,'' and the name change to ''M&T Bank Corporation'' became effective on May 29, 1998. The Company filed the Form 8–A, effective on May 27, 1998, and mentioned below, under the Company's old name.

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security has been listed for trading on the Amex and, pursuant to a Registration Statement of Form 8–A which became effective on May 27, 1998, on the New York Stock Exchange, Inc. (''NYSE''). Trading in the Company's Security under the name ''M&T Bank Corporation'' commenced on the NYSE at the opening of business on June 1, 1998, and concurrently therewith such Security was suspended from trading on the Amex.

The Company complied with Amex Rule 18 by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing and registration on the Amex and by setting forth in detail to the Exchange the reasons and facts supporting the withdrawal.

In deciding to withdraw its Security from listing and registration on the Amex, the Company considered the direct and indirect costs and the division of the market resulting from a dual listing on the NYSE and the Amex.

By letter dated May 22, 1998, the Amex informed the Company that it has no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

By reason of Section 12(b) of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports with the Commission and the NYSE under Section 13 of the Act.

Any interested person may, on or before July 16, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–17434 Filed 6–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Oak Industries Inc., Common Stock, $.01 Par Value, Together With Junior Preferred Stock Purchase Rights Expiring December 7, 2005) File No. 1–4474

June 24, 1998.

Oak Industries Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified Securities (''Securities'') from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities currently are listed for trading on both the PCX and New York Stock Exchange, Inc. (''NYSE'').

The Company complied with PCX Rule 3.4(b) by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Securities from listing and registration on the PCX and by setting forth in detail to the Exchange the reasons and facts supporting the withdrawal.

In deciding to withdraw its Securities from listing and registration on the PCX, the Company considered the administrative burden of complying with the listing requirements and rules of governance of both the PCX and the NYSE and the direct and indirect costs and expenses attendant in maintaining the dual listing of the Securities.

By letter dated June 3, 1998, the PCX informed the Company that it had approved the Company's request to withdraw the Securities from listing and registration on the PCX.

By reason of Section 12(b) of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports with the Commission and the NYSE under Section 13 of the Act.

Any interested person may, on or before July 16, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–17433 Filed 6–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23284; 812–10620]

PaineWebber America Fund et al.; Notice of Application

June 24, 1998.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 17(a) and (e) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered investment companies to use cash collateral from securities lending transactions and uninvested cash to purchase shares (''Shares'') of a private investment company (''New Fund'') advised by Mitchell Hutchins Asset Management Inc. (''Mitchell Hutchins''); PaineWebber Incorporated (''PaineWebber'') and Mitchell Hutchins to accept fees from certain other registered investment companies that are affiliated persons solely because they hold 5% or more of the Shares of the New Fund (the ''Other Funds''); and PaineWebber and certain affiliated broker-dealers to borrow portfolio securities from certain affiliated registered investment companies and to receive brokerage commissions from, and to engage in principal securities transactions with, the Other Funds.

APPLICANTS: PaineWebber; Mitchell Hutchins; PaineWebber America Fund, PaineWebber Cashfund, Inc., PaineWebber Investment Series, PaineWebber Managed Assets Trust, PaineWebber Managed Investments Trust, PaineWebber Managed Municipal Trust, PaineWebber Master Series, Inc., PaineWebber Municipal Series, PaineWebber Mutual Fund Trust, PaineWebber Olympus Fund,

PaineWebber Financial Services Growth Fund Inc., PaineWebber RMA Money Fund, Inc., PaineWebber RMA Tax-Free Fund, Inc., PaineWebber Securities Trust, Mitchell Hutchins Series Trust, Strategic Global Income Fund, Inc., 2002 Target Term Trust Inc., All-American Term Trust Inc., Global High Income Dollar Fund Inc., Global Small Cap Fund Inc., Investment Grade Municipal Income Fund Inc., Insured Municipal Income Fund Inc., Managed High Yield Fund Inc., PaineWebber Municipal Money Market Series, PaineWebber Investment Trust, PaineWebber Investment Trust II, Liquid Institutional Reserves, PaineWebber PACE Select Advisors Trust, PaineWebber Index Trust, Managed High Yield Plus Fund Inc., Mitchell Hutchins Institutional Series (collectively, the ''Affiliated Funds''), and any other registered investment company, or series thereof, which currently is or in the future may be advised by Mitchell Hutchins or PaineWebber, or any entity controlling, controlled by, or under common control with PaineWebber or Mitchell Hutchins,[1] that may purchase Shares of New Fund; and any Other Fund.

FILING DATES: The application was filed on April 17, 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 July 20, 1998, and should be accompanied by proof of service on the 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 Fifth Street, NW., Washington, DC 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Affiliated Funds are registered under the Act as either closed-end or open-end management investment companies. PaineWebber and Mitchell Hutchins, each an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''), serve as investment adviser and sub-adviser, respectively, to PaineWebber Cashfund, Inc., PaineWebber RMA Money Fund, Inc., PaineWebber RMA Tax-Free Fund, Inc., PaineWebber Managed Municipal Trust, PaineWebber Municipal Money Market Series, and Liquid Institutional Reserves. Mitchell Hutchins is a wholly-owned subsidiary of PaineWebber and serves as investment adviser to the remaining Affiliated Funds. Both PaineWebber and Mitchell Hutchins are registered as broker-dealers under the Securities Exchange Act of 1934. PaineWebber, Mitchell Hutchins, and any other broker-dealer controlled by or under common control with PaineWebber are referred to as ''Affiliated Broker-Dealers.''

2. Each Affiliated Fund is permitted under its investment objectives, policies, and restrictions to lend its portfolio securities. PaineWebber has been authorized by the board of directors/trustees of each Affiliated Fund (the ''Board'') to act as securities lending agent for the Fund. The PaineWebber personnel providing day-to-day lending agency services to the Affiliated Funds do not provide investment advisory services to the Funds, or participate in any way in the selection of portfolio securities or other aspects of the management of the Funds. In addition, depending on the particular Affiliated Fund, PaineWebber's activities as lending agent are conducted under the supervision of investment management personnel of the Affiliated Fund's investment adviser, who are not in any manner involved in PaineWebber's lending agency operations. PaineWebber also provides securities lending agency services to various other clients, including the Other Funds.

3. PaineWebber, as lending agent for the Affiliated Funds, is responsible for soliciting borrowers of portfolio securities (''Borrowers''), monitoring daily the value of the loaned securities and collateral, and performing other administrative functions. PaineWebber, under the supervision of each Affiliated Fund's investment adviser enters into loans with pre-approved Borrowers on terms that have been pre-approved by the Fund's investment adviser. At present, the Affiliated Funds may not lend portfolio securities to PaineWebber. Applicants request that the Affiliated Funds, as well as the Other Funds, have the flexibility to lend their securities to any Affiliated Broker-Dealer.

4. Each Borrower of an Affiliated Fund's portfolio securities is required to tender collateral to the Fund's custodian in the form of cash, U.S. Government securities, or irrevocable letters of credit. When the collateral consists of U.S. government securities or letters of credit, PaineWebber typically negotiates on behalf of the Affiliated Fund a lending fee to be paid by the Borrower to the Affiliated Fund. Alternatively, when the collateral consists of cash (''Cash Collateral''), the Affiliated Fund, instead of receiving a separate lending fee, typically receives a portion of the return earned on the investment of the Cash Collateral by or under the direction of the Fund's investment adviser. For its services as lending agent to the Affiliated Funds, PaineWebber is permitted to receive fees based on a share of the revenue generated from securities lending transactions for the Affiliated Funds.[2]

5. Affiliated Funds and Other Funds may have uninvested cash (''Uninvested Cash'') on hand from a variety of sources. Uninvested Cash may result from dividend or interest payments, unsettled securities transactions, reserves held for future investments, scheduled maturity of investments, liquidation of portfolio securities, as well as cash received from new investors.

6. Currently, the Affiliated Funds invest their Cash Collateral and Uninvested Cash in short-term money market instruments. Applicants propose to create the New Fund to serve as an alternative investment option for the Affiliated Funds, the Other Funds, and other clients of PaineWebber and Mitchell Hutchins for the investment of Cash Collateral and Uninvested Cash. The New Fund may be organized as a New York or Delaware business trust or

[1] All existing Affiliated Funds that currently intend to rely on the order have been named as applicants. Any other existing or future Affiliated Funds that may rely on the order in the future will do so in accordance with the terms and conditions in the application.

[2] *See PaineWebber America Fund, et al.*, Investment Company Act Release Nos. 22541 (March 4, 1997) (notice) and 22594 (Apr. 1, 1997) (order).

limited liability company and will be comprised of one or more separate investment series. The New Fund will operate as a private investment company in reliance on section 3(c)(7) of the Act. The New Fund will offer daily redemption of its shares at the current net asset value per Share. The New Fund will not impose any sales load, redemption or asset-based distribution fees. By investing in the New Fund, the Affiliated and Other Funds anticipate that they will be able to lower transaction costs, increase liquidity, achieve greater diversification, and enjoy greater returns in connection with their investment of Cash Collateral and Uninvested Cash.

7. Applicants intend to operate the initial investment series of the New Fund as a money market portfolio that values its securities based on the amortized cost method and complies with rule 2a–7 under the Act (''Money Market Series''). Future investment series of the New Fund could operate as Money Market Series, as well as portfolios which invest in high quality securities but with longer maturities or different quality standards. Any Affiliated or Other Fund that complies with the requirements of rule 2a–7 under the Act will invest only in a Money Market Series.

8. Mitchell Hutchins or PaineWebber may serve as Trustee to the New Fund. Mitchell Hutchins will act as investment adviser to the New Fund. For acting as investment adviser, Mitchell Hutchins will receive an advisory fee from the initial series of the New Fund, but will waive its advisory fees for any Affiliated Fund to the extent necessary to avoid a duplication of advisory fees for the Affiliated Fund. In addition, PaineWebber, Mitchell Hutchins, or an affiliated person may provide administrative, accounting, transfer agent and other services to the New Fund and receive reasonable compensation for providing the services.

Applicants' Legal Analysis

A. Sections 17(a), 17(b), and 17(d), and Rule 17d–1

1. Sections 17(a)(1) and 17(a)(2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of the affiliated person, acting as a principal, to sell any security to, or purchase any security from, the investment company. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of a registered investment company or any affiliated person of the affiliated person, acting as principal, to borrow money or other property from the investment company. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of the affiliated person or principal underwriter, acting as principal, from effecting any transaction in connection with the any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order.

2. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly owning, controlling, or holding with the power to vote, 5 percent of more of the outstanding voting securities of the other person, as well as any person directly or indirectly controlling, controlled by, or under common control with, the other person; and in the case of an investment company, its investment adviser. Section 2(a)(9) of the Act defines ''control'' to mean the power to exercise a controlling influence over the management or policies of a company.

3. The Affiliated Funds and New Fund may be deemed affiliated persons because they are advised by Mitchell Hutchins or PaineWebber. Accordingly, the sale or redemption of Shares of the New Fund by the Affiliated Funds may be prohibited under sections 17(a)(1) and 17(a)(2). Moreover, by owning more than 5 percent of the New Fund's Shares, an Other Fund may be deemed to be an affiliated person of the New Fund and thus subject to the same prohibitions. Applicants also state that the Affiliated Funds and the Other Funds by purchasing and redeeming Shares of the New Fund, PaineWebber and Mitchell Hutchins by acting as investment adviser or sub-adviser to the New Fund, PaineWebber by acting as lending agent for the Affiliated and Other Funds, and PaineWebber or Mitchell Hutchins by serving as Trustee and providing other services to the New Fund, may be deemed participants in a joint transaction under section 17(d) of the Act and rule 17d–1 under the Act.

4. Sections (17(a)(1) and 17(a)(2) also may prohibit the Affiliated Broker-Dealers, acting as principal, from selling securities to or purchasing portfolio securities from the Other Funds. Similarly, section 17(a)(3) may prohibit an Affiliated Broker-Dealer from being a Borrower of portfolio securities of the Affiliated and Other Funds. Applicants also believe that the proposed lending of portfolio securities by the Affiliated and Other Funds to the Affiliated Broker-Dealers may be deemed to involve a ''joint enterprise or joint arrangement or profit-sharing plan'' within the meaning of section 17(d) and rule 17d–1.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person, the transaction is consistent with the policy of each registered investment company, and the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any class of 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. Under rule 17d–1, in passing on applications for orders under section 17(d), the Commission considers whether the company's participation in the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

6. Applicants request an order under sections 6(c), 17(b), and 17(d) of the Act and rule 17d–1 under the Act to permit the Affiliated and Other Funds to purchase Shares of the New Fund. Applicants submit that the terms of the proposed transactions are reasonable and fair and do not involve overreaching because the Affiliated and Other Funds will be treated like any other shareholder in the New Fund and will purchase and redeem Shares on the same terms as Shares are purchased and redeemed by other investors in the New Fund. Applicants also state that the New Fund will not impose any sales load, redemption or asset-based distribution fee, and that PaineWebber or Mitchell Hutchins, as applicable, will waive advisory fees paid to it by an Affiliated Fund, to the extent necessary to avoid a duplication of advisory fees for the Affiliated Funds as a result of their investment in the New Fund. Finally, applicants state that the New Fund will comply with the provisions of the Act relating to prohibitions on affiliated transactions, leveraging and the issuance of senior securities, and rights of redemption.

7. Applicants submit that investment in the New Fund of Cash Collateral and Uninvested Cash will be consistent with the policy of each Affiliated or Other Fund, as recited in its registration

statement and reports filed under the Act. Applicants state that any Affiliated or Other Fund that complies with the requirements of rule 2a–7 under the Act will invest only in a Money Market Series of the New Fund; and that the investment of Cash Collateral in the New Fund will be conducted in accordance with the SEC staff's securities lending guidelines.

8. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Affiliated Broker-Dealers to engage in principal transactions with the Other Funds. Applicants state that each such transaction between an Other Fund and an Affiliated Broker-Dealer will be the product of arms-length bargaining because each Other Fund has its own investment adviser that is not controlled by the Affiliated Broker-Dealer and that, in economic reality, may be a competitor of the Affiliated Broker-Dealer.

9. Applicants request an order under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act, to permit the Affiliated Broker-Dealers to be Borrowers of portfolio securities from an Affiliated or Other Fund. Applicants state that each loan to an Affiliated Broker-Dealer by an Affiliated Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated broker-dealers.[3] In this regard, applicants state that at least 50% of the loans made by the Affiliated Fund, on an aggregate basis, will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by directors/trustees of each Affiliated Fund who are not ''interested persons'' as defined in section 2(a)(19) of the Act (the ''Disinterested Directors'') (the ''Lending Committee'') and all transactions with the Affiliated Broker-Dealers will be reviewed periodically by the officers of the Affiliated Funds and by the Boards of the Affiliated Funds. Lastly, the Lending Committee will review detailed quarterly compliance reports on all lending activity.

10. Applicants also request an order under section 17(d) of the Act and rule 17d–1 under the Act to permit PaineWebber to receive lending agency fees from the Other Funds based on a share of securities lending revenues, and Mitchell Hutchins to receive fees from the Other Funds for providing administrative and management services relating to the Cash Collateral. Applicants note that, absent the existence of New Fund and the ownership of 5 percent or more of the Shares of New Fund by an Other Fund, PaineWebber and Mitchell Hutchins may receive these fees from an Other Fund. Applicants thus assert that it is appropriate to permit PaineWebber and Mitchell Hutchins to receive the fees from the Other Funds because the affiliation between PaineWebber and Mitchell Hutchins and the Other Funds is technical in nature and the fees will be the product of arms-length bargaining.

B. Section 17(e)

11. Section 17(e)(2) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of the affiliated person, acting as broker in connection with the sale of securities to or by the investment company, to receive from any source a commission for effecting the transaction which exceeds (a) the usual and customary broker's commission if the sale is effected on a securities exchange, (b) 2 percent of the sales price if the sale is effected in connection with a secondary distribution of the securities, or (c) 1 percent of the purchase or sale price of the securities if the sale if otherwise effected.

12. Applicants request an order under section 6(c) of the Act exempting them from section 17(e)(2) of the Act as it may apply to transactions by Other Funds that are brokered by an Affiliated Broker-Dealer. Applicants state that an investment adviser for an Other Fund would have no interest in preferring or benefiting an Affiliated Broker-Dealer at the expense of the Other Fund. Applicants thus assert that brokerage transactions by the Affiliated Broker-Dealer for the Other Funds do not raise the concerns underlying section 17(e)(2).

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

Borrowing of Portfolio Securities

1. The Affiliated Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

2. An Affiliated Fund will not make any loan to any Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction costs incurred in making the loan.

3. a. All loans will be made with spreads no lower than those set forth in a schedule of spreads which will be established and may be modified from time to time by each Affiliated Fund's Lending Committee (the ''Schedule of Spreads'').

b. The Schedule of Spreads will set forth rates of compensation to the Affiliated Funds that are reasonable and fair and that are determined in light of those considerations set forth in the application. The Schedule of Spreads and any modifications will be ratified by the full Board and by a majority of the Disinterested Directors.

c. The Schedule of Spreads will be uniformly applied to all Borrowers of the Affiliated Funds' portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

d. If a security is lent to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to Affiliated Broker-Dealers will be made at no less than the higher spread.

e. The securities lending program for each Affiliated Fund will be monitored on a daily basis by an officer of each Affiliated Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to Affiliated Broker-Dealers for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Affiliated Funds' Lending Committees.

4. The Boards of the Affiliated Funds, including a majority of the Disinterested Directors, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Boards and the conditions of any order that may be granted and that such transactions were conducted on terms that were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

5. The Affiliated Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities, and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two

[3] A ''spread'' is the compensation earned by a fund, as lender, from a securities loan, that is in the form either of a lending fee payable by the borrower to the fund (when non-cash collateral is posted) or the excess—retained by the fund—over a rebate rate payable by the fund to the borrower (when cash collateral is posted and then invested by the fund).

years in an easily accessible place, a written record of each loan setting forth the number of shares loaned, the face amount of the securities lent, the fee received (or the rebate rate remitted), the identity of the Borrower, the terms of the loan, and any other information or materials upon which the finding was made that each loan made to Affiliated Broker-Dealers was fair and reasonable, and that the procedures followed in making such loan were in accordance with the other undertakings set forth in the application.

6. The total value of securities loaned to any one broker-dealer on the approved list will be in accordance with a schedule to be approved by the Board of each Affiliated Fund, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Affiliated Fund, computed at market.

Investment of Uninvested Cash and Cash Collateral

7. The Affiliated Funds, New Fund, and any future Affiliated Fund that relies on the order will be advised by PaineWebber, Mitchell Hutchins, or any entity controlling, controlled by, or under common control with, PaineWebber or Mitchell Hutchins.

8. A majority of the Board of an Affiliated Fund (including a majority of the Disinterested Directors), will initially and at least annually thereafter determine that investing Uninvested Cash and Cash Collateral in Shares of New Fund is in the best interests of the shareholders of the Affiliated Fund.

9. With respect to any Affiliated Fund that invests in Shares of New Fund, PaineWebber or Mitchell Hutchins will reduce its advisory fee charged to the Affiliated Fund in an amount (the ''Reduction Amount'') equal to the net asset value of the Affiliated Fund's holdings in New Fund multiplied by the rate at which advisory fees are charged by Mitchell Hutchins to New Fund. Any fees remitted or waived pursuant to this condition will not be subject to recoupment by PaineWebber or Mitchell Hutchins or their affiliates at a later date.

10. Investment in Shares of New Fund by an Affiliated or Other Fund will be consistent with the Affiliated or Other Fund's investment objectives and policies.

11. An Affiliated or Other Fund's Uninvested Cash and Cash Collateral will be invested in a particular investment series of the New Fund only if that investment series invests in the types of instruments that the Affiliated or Other Fund has authorized for the investment of its Uninvested Cash and Cash Collateral.

12. Each investment series of the New Fund that uses the amortized cost method of valuation as defined in rule 2a–7 under the Act will comply with rule 2a–7. With respect to such series, Mitchell Hutchins will adopt and monitor the procedures described in rule 2a–7(c)(6) under the Act and will take such other actions as are required to be taken pursuant to such procedures. An Affiliated or Other Fund may only purchase Shares of an investment series of the New Fund using the amortized cost method of valuation if Mitchell Hutchins determines on an ongoing basis that the investment series is in compliance with rule 2a–7. Mitchell Hutchins will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and the staff.

13. An Affiliated or Other Fund that complies with rule 2a–7 under the Act will not invest its Cash Collateral or Uninvested Cash in an investment series of the New Fund that does not comply with the requirements of rule 2a–7.

14. The securities lending program of each Affiliated and Other Fund will comply with all present and future applicable Commission staff positions regarding securities lending arrangements.

15. Each Affiliated or Other Fund will invest Uninvested Cash in, and hold Shares of, the New Fund only to the extent that the Affiliated or Other Fund's aggregate investment of Uninvested Cash in Shares of the New Fund does not exceed 25% of the Affiliated or Other Fund's total assets.

Operation of the New Fund

16. The New Fund will comply as to each investment series with the requirements of sections 17 (a), (d), and (e), and 18 of the Act as if the New Fund were a registered open-end investment company. With respect to all redemption requests made by an Affiliated or Other Fund, the New Fund will comply with section 22(e) of the Act. Mitchell Hutchins will, subject to approval by the Trustee, adopt procedures designed to ensure that the New Fund complies with sections 17 (a), (d), and (e), 18, and 22(e) of the Act. Mitchell Hutchins will also periodically review and periodically update as appropriate the procedures and will maintain books and records describing the procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and the staff.

17. The net asset value per share with respect to Shares of the New Fund will be determined separately for each investment series by dividing the value of the assets belonging to that investment series, less the liabilities of that investment series, by the number of Shares outstanding with respect to that investment series.

18. The Shares of the New Fund will not be subject to a sales load, redemption fee, asset-based sales charge, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers).

19. Each Affiliated or Other Fund will purchase and redeem Shares of the New Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the New Fund. A separate account will be established in the shareholder records of the New Fund for the account of each Affiliated or Other Fund.

20. The New Fund will not acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17473 Filed 6–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [63 FR 34949, June 26, 1998].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: June 26, 1998.

CHANGE IN THE MEETING: Time Change.

The time for the closed meeting scheduled for Wednesday, July 1, 1998, at 2:30 p.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: June 29, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–17711 Filed 6–29–98; 3:56 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40119; File No. SR–DTC–98–7]

June 24, 1998.

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Adding a New Service Providing Pre-Issuance Messaging of Money Market Instruments Trade Details to Issuing and Paying Agents and Dealers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 22, 1998. The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–98–7) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will approve DTC's providing Pre-Issuance Messaging (''PIM'') of money market instruments (''MMIs'') trade details to issuing and paying agents (''IPAs'') and dealers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's proposed rule change seeks to provide a less expensive and more efficient mechanism for IPAs and dealers to communicate securities information, specifically PIM instructions, related to the issuance of MMI. Although the PIM service is being designed to accommodate all types of MMIs, it is anticipated that initially the PIM service will be utilized only for commercial paper (''CP'').

According to DTC, the service will enable dealers and IPAs to communicate issuance instructions to one another prior to the IPAs' issuing CP by book-entry through DTC or through physical certificates outside DTC.

Background

DTC begin operation of its CP program in October 1990 and handles almost all CP issuances done in the United States today. The CP program is designed to allow for the electronic issuance done in the United States today. The CP program is designed for the electronic issuance of CP in book-entry-only form. The transmission of issuance instructions for IPAs to DTC for dealer-placed CP is central to the CP program. Typically, between four and five messages are transmitted among IPAs and dealers prior to each issuance of CP. Currently, these messages are transmitted via dedicated links between a dealer and individual IPA. Thus, dealers interacting with more than one IPA must create and maintain multiple communications links. Typically, dealers maintain seven or more separate links with IPAs.

As a result of the recommendation by dealer participant that DTC investigate offering a pre-issuance messaging service, a working group of dealers and IPA was formed in June of 1996 under the auspices of the The Bond Market Association's Money Market Task Force. DTC has worked closely with the Task Force on the development of the CP program and again drew on its expertise for the PIM project.

Proposed Rule Change

Under the proposed rule change, IPAs and dealers could send PIM instructions to each other by using DTC as a conduit or central switch for the messages. PIM instructions would be sent electronically to DTC. DTC would not perform any processing on the instructions but would instead automatically route them to the recipient indicated in the sender's instructions.

PIM employs several levels of system security in addition to allowing IPAs and dealers to utilize their own password security per message if they wish. As each message sent requires an acknowledgment from the receiving party, it is unlikely that messages will be lost. Should a message be undeliverable for some reason, DTC will issue a notice to the message originator indicating the message could not be delivered. The originator will then have to reissue a new message. DTC will charge the sending party $.04 per message. There will be no charge to the message receiver. Each user of the PIM Service will enter into a PIM agreement with DTC.

DTC believes that the proposed rule change is consistent with the requirements of Sections 17A(b)(3)(A) of the Act and the rules and regulations thereunder because it encourages an efficient means of communicating among dealers and IPAs in connection with the issuance of MMIs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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, in the public interest, and for the protection of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change have not been solicited or received on 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 **Fedeal 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 DTC consents, the Commission will:

(A) By order approved such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

IV.—Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–7 and should be submitted by July 22, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17435 Filed 6–30–98; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee (ISAC–14) will hold a meeting on July 20, 1998 from 9:15 a.m. to 3:00 p.m. The meeting will be open to the public from 9:15 a.m. to 11:15 a.m. and closed to the public from 11:15 a.m. to 3:00 p.m.

DATES: The meeting is scheduled for July 20, 1998, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce Room 4830, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Kathy Rice or Susan Toohey, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–4792 or Bill Daley, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold a meeting on July 20, 1998 from 9:15 a.m. to 3:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the Untied States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the Untied Stated Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 11:15 a.m. to 3:00 p.m. The meeting will be open to the public and press form 9:15 a.m. to 11:15 a.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committees will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 98–17481 Filed 6–30–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice of Order to Show Cause (Order 98–6–33), Dockets OST–97–2940 and OST–97–2941]

Applications of Planet Airways, Inc. for New Certificate Authority

AGENCY: Office of the Secretary, Department of Transportation.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders (1) finding Planet Airways, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than July 10, 1998.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–97–2940 and OST–97–2941 and addressed to the Department of Transportation Dockets (SVC–124.1, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366–2337.

Dated: June 26, 1998.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–17536 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss emergency evacuation issues.

DATES: The meeting will be on July 23, 1998, at 10 a.m. Arrange for oral presentations by July 17, 1998.

ADDRESSES: The meeting will be held at the Boeing Facility, 1200 Wilson Boulevard (across the street from the Rosslyn Metro stop), Rosslyn, VA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held on July 23, 1998, at the Boeing facility at 1200 Wilson Boulevard, Rosslyn, VA (across the street from the Rosslyn Metro stop).

The agenda will include:

- Opening remarks.
- Report on Performance Standards Working Group Activities.
- Briefing on draft notice of proposed rulemaking regarding escape device lighting.
- Discussion of assignment of new ARAC task on emergency exit access.

Attendance is open to the public, but will be limited to space available. The public must make arrangements by July 17, 1998, to present oral statements at the meeting. Written statements may be presented to the committee any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by providing copies at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on June 25, 1998.

Florence Hamn,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–17490 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 98–3990]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to reinstate the following expired information collection: Charter Service Operations.

DATES: Comments must be submitted before August 31, 1998.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Rita Daguillard, Office of the Chief Counsel, (202) 366–1936.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: **Charter Service Operations** (*OMB Number: 2132–0543*)

Background: Section 5323(d) of the Federal Transit Laws (FT Laws) requires all applicants for financial assistance from FTA to enter into a charter bus agreement with the Secretary of Transportation (delegated to the Administrator of FTA in 49 CFR 1.51(a)). Section 5323(d) of the FT Laws provides protections for private intercity charter bus operators from unfair competition by FTA recipients. Section 5302(a)(7) of the FT Laws as interpreted by the Comptroller General permits FTA recipients, but does not state that recipients have a right, to provide charter bus service with FTA funded facilities and equipment only if it is incidental to the provision of mass transportation service. These statutory requirements have been implemented in FTA's charter regulation, 49 CFR Part 604.

49 CFR 604.7 requires all applicants for financial assistance under Section 5309, 5336, or 5311 of the FT Laws to include two copies of a charter bus agreement with the first grant application submitted after the effective date of the rule. The applicant signs the agreement, but FTA executes it only upon approval of the application. This is a one-time submission with incorporation by reference in subsequent grant applications. Section 604.11(b) requires recipients to provide notice to all private charter operators and allow them to demonstrate that they are willing and able to provide the charter service the recipient is proposing to provide. The notice must be published in a newspaper and sent to any private operator requesting notice and to the United Bus Owners of America and the American Bus Association, the two trade associations to which most private charter operators belong. To continue receiving federal financial assistance, recipients must publish this notice annually. Section 604.13(b) requires recipients to notify each private operator that presented evidence of the recipient's determination whether the private operator meets the definition of ''willing and able.'' This notice is also an annual requirement. On December 30, 1988, FTA issued an amendment to the Charter Service Regulation which allows additional exceptions for certain non-profit social service groups that meet eligibility requirements.

Respondents: State and local government, business or other for-profit institutions, and non-profit institutions.

Estimated Annual Burden on Respondents: 1.2 hours for each of the 1,656 respondents.

Estimated Total Annual Burden: 1,984 hours.

Frequency: Annual.

Issued: June 26, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 98–17476 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3979; Notice No. 1]

Reports, Forms, and Recordkeeping Requirements (Authority: Paperwork Reduction Act of 1995)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before August 31, 1998.

ADDRESSES: Direct all written comments to the DOT Docket Management

Facility, U.S. Department of Transportation, Room PL–01, 400 Seventh Street, SW, Washington, DC 20590. Docket No. NHTSA _____. Comments must refer to the docket and notice numbers cited at the beginning of this notice.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Michael Robinson, NHTSA Information Collection Clearance Officer, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 6123, Washington, DC 20590. Mr. Robinson's telephone number is (202) 366–9456.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Assessment of the Drowsy Driver Education Campaign

Type of Request—New information collection requirement.

OMB Clearance Number—Not yet assigned.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—12/31/99.

Summary of the Collection of Information—NHTSA is developing an educational program to help night-shift workers to increase the amount and improve the quality of their sleep in order to reduce their risk for involvement in automobile crashes as a result of driving while drowsy. The education campaign will present several messages related to sleep improvement, sleepiness, and driving while drowsy to night-shift workers employed by 24-hour industries. To ensure that the program is effective in conveying crucial information to shift workers, NHTSA is proposing to conduct a survey of workers to determine changes in their knowledge, attitudes and behavior pertaining to sleep and drowsy driving as a result of the Drowsy Driver Education Campaign. NHTSA proposes to collect survey data from night-shift workers at up to twenty sites that implement the program to varying degrees.

Workers' participation in the self-administered survey would be voluntary. The survey tool would be administered prior to the beginning of the campaign and again 6 months later (after the close of the campaign) to assess the extent to which campaign messages had their intended effect.

Questions included in the survey would be designed to assess changes in night shift worker knowledge, attitude, and behavior as they relate to improved sleep and decreased drowsy driving. A core set of survey items will be asked on both the pre-and post-test survey instruments; some retrospective items will only appear on the post-test instrument.

Survey participants would include a non-probability sample of up to 100 night-shift workers (employed between the hours of 11 p.m. and 7 a.m.) at each participating employer, including some workers on rotating shifts, all of whom would be exposed to the education campaign. Participants are expected to include both male and female workers, age 18 and over. The proposed survey would be anonymous and confidential.

Description of the Need for the Information and Proposed use of the Information—NHTSA was established to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

In the 1996 Appropriations Bill for the Department of Transportation, the Senate Appropriations Committee report noted that, ''NHTSA data indicate that in recent years there have been about 56,000 crashes annually in which driver drowsiness/fatigue was cited by police. An annual average of roughly 40,000 nonfatal injuries and 1,500 fatalities result from these crashes. It is widely recognized that these statistics under-report the extent of these types of crashes.''

In response to the Committee's report, Congress allocated funds for a public education campaign on drowsy driving among non-commercial drivers to be sponsored by NHTSA and the National Center of Sleep Disorders Research of the National Institutes of Health.

As a preliminary task in the development of the campaign, NHTSA in cooperation with the National Center on Sleep Disorders Research (an agency of the National Heart, Lung, and Blood Institute of the National Institutes of Health) convened an Expert Panel on Driver Fatigue and Sleepiness to conduct a review of the literature to establish the state of knowledge on sleepiness and driving. This research indicated that the night shift worker is an appropriate target for the education campaign addressing drowsy driving. Night shift workers typically get one and one-half fewer hours of sleep per 24 hours than day workers. They are also at greatest risk of sleep disruption because their work requires that they sleep during daylight hours, interfering with circadian (i.e., day/night sleep) patterns known to exist in human beings.

Data from a recent national telephone survey indicate that 57 percent of the adult public have driven when drowsy during the past calendar year; 23 percent of this population report that they have fallen asleep at the wheel. When data were restricted to individuals working rotating or evening shifts, they indicate that: (1) 80 percent of adults working rotating shifts and 64 percent of adults working regular night shifts had driven while drowsy during the past calendar year, and (2) 40 percent of adults working rotating shifts and 28 percent of adults working regular night shifts reported falling asleep at the wheel.

An education campaign with messages focused on the need for more continuous and higher quality sleep is being finalized for implementation among night shift workers. The proposed survey would assess the ability of this campaign to improve sleep patterns among night shift workers. The survey would allow for the collection of baseline data on knowledge, attitude, and behaviors related to sleep and drowsy driving among shift workers, and their

comparison with similar data collected at the close of the campaign. If approved, the proposed survey would assist NHTSA in establishing policy related to the expansion of the education campaign to the larger driving community.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—The information collection described in this notice would be a self-administered paper-and-pencil survey requiring approximately 20 minutes to complete. It would be administered to up to 2,000 shift workers (average of about 100 per site), both male and female, ages 18 and older. Survey participants will be identified by the 15 to 20 employers who will have been awarded grants to participate in the conduct and evaluation of the educational program. Each individual would be surveyed twice during the course of the program: prior to the start of the campaign and again at the close of the campaign.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information—NHTSA estimates that each respondent in the sample would require an average of 20 minutes to complete the survey. Thus, the number of estimated reporting burden hours a year on the survey participants (2,000 participants multiplied by 2 survey administrations multiplied by 20 minutes) would be 1,333 person-hours for the proposed survey. The respondents would not incur any reporting cost from the data collection. The respondents also would not incur any record keeping burden or record keeping cost from the information collection.

James L. Nichols,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 98–17512 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement in Support of a Large City/Jurisdiction Demonstration and Evaluation Program for Pedestrian Safety

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of a discretionary cooperative agreement in support of a large city/jurisdiction demonstration and evaluation program for pedestrian safety.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to demonstrate and evaluate the effectiveness of a comprehensive behavioral and engineering-based countermeasures program for reducing the occurrence of crashes involving pedestrians of all ages. Past Departmental research efforts typically have focused on developing and, when possible, assessing countermeasures for a single target group, such as school-age children. The idea here is to determine the combined effects of various crash prevention approaches to maximize the safety benefits to all pedestrians. The study will use a recently developed methodology for identifying land areas (or zones) within jurisdictions containing concentrations of crashes for specific target groups. Subsequently, existing, refined, and, as needed, newly developed countermeasures will be directed within these zones at pedestrians of all ages, especially those at high risk of crash involvement. To the extent possible, the program also will determine the impact of countermeasures directed at one or more diverse racial or ethnic group known to have a traffic safety problem.

This notice solicits applications from public and private, non-profit, for profit and not-for-profit organizations, governments and their agencies, or a consortium of these organizations that are interested in implementing and evaluating the safety zones and countermeasures program within a large jurisdiction. Preference will be given to those applications which help NHTSA meet its needs to obtain an urban diverse mix, potential for replication in other communities, and/or other factors deemed relevant by NHTSA.

NHTSA anticipates awarding one demonstration and evaluation project for a period of four years as a result of this announcement. In the event additional money becomes available a second award may be made during FY'99 or FY 2000.

DATES: Applications must be received at the office designated below on or before July 31, 1998.

ADDRESSES: Applications must be submitted to the NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Lamont Norwood, 400 7th Street, SW, Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–98–H–05183. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Lamont Norwood, Office of Contracts and Procurement, at (202 366–8573) or by e-mail to LNorwood@nhtsa.dot.gov. Programmatic questions relating to this cooperative agreement program should be directed to Marv Levy, Traffic Safety Programs, NHTSA, NTS–31, 400 Seventh Street S. W., Washington, D.C. 20590 (202 366–5597), or by e-mail at mlevy@nhtsa.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The Problem

On average, a pedestrian is killed in a traffic crash every 97 minutes, and injured every six minutes. In 1996, 5412 pedestrians were killed in traffic crashes in the U.S. and 82,000 were injured. The economic costs of these crashes are substantial, costing billions of dollars each year. The Department of Transportation, via the Secretarial Initiative for Pedestrians and Bicyclists, has targeted a decrease in the number of pedestrian crashes of 10 percent by the year 2000. This demonstration will support the Departmental effort.

Why a Large City or Jurisdiction is Needed

In 1996 seventy-one percent of pedestrian fatalities occurred in urban areas. For example, in 1996, cities with high percentages of pedestrian fatalities among all traffic related deaths included New York (52.7 percent), Baltimore (47.1 percent), Buffalo (44.8 percent), Miami (43.1 percent), Honolulu (41.7 percent), Long Beach (41.7 percent), and San Jose (40.0 percent).

Target Groups of Interest

Over the past twenty-five years NHTSA and the Federal Highway Administration (FHWA) collected data on pedestrians most likely to be involved in crashes. These data suggest that three groups are most at risk: young children, alcohol impaired adults, and older pedestrians. In 1996, nearly one-third (31 percent) of all children between the ages of five and nine years who were killed in traffic crashes were pedestrians, more than one-fifth (22 percent) killed under the age of 16 were pedestrians, and 7 percent of all traffic injuries under the age of 16 were pedestrians. Older pedestrians (ages 65+) accounted for 22.4 percent of all pedestrian fatalities; however, this group constitutes only 12.8 percent of

the population. Older adults have the highest pedestrian fatality rate among all ages. Excessive drinking is a major traffic safety problem facing pedestrians. In 1996, 36 percent of all pedestrian fatalities (16 years of age or older), were intoxicated, with blood alcohol concentrations of 0.10 grams per deciliter or greater. Recent study findings suggest the alcohol crash problem for pedestrians crosses both racial and ethnic groups. The problem is not confined to white Americans but extends to groups such as Afro -Americans, Hispanic Americans, and Native Americans. As with drinking drivers, most victims are male, and the crashes occur primarily at night and on weekends.

Preventing Pedestrian Crashes

Within the Department of Transportation both NHTSA and FHWA have responsibilities in the area of pedestrian safety. NHTSA is primarily responsible for developing and testing public information and education, training, legislative, and enforcement based countermeasures, whereas the FHWA is primarily responsible for improving pedestrian safety by developing and testing engineering applications. The types of countermeasures developed and implemented by both Agencies typically complement each other. For example, crash reduction effects have been achieved at intersection locations for older pedestrians in Phoenix, AZ by combining behavioral advice in conjunction with engineering activities. FHWA sponsored improvements to the physical environment at selected intersections within a set of ''safety zones'' containing concentrations of crashes. These improvements included removal of visual ''screens,'' which blocked pedestrians and drivers from viewing each other, and adding new traffic signs explaining the meaning of different signal phases such as flashing ''Don't Walk''. NHTSA, on the other hand, sponsored the development of educational materials for use with older pedestrians. Door hangers were prepared containing information about what pedestrians should do at intersections and what they should do as drivers to avoid crash involvement. Some of the advice provided specifically discussed the meaning of pedestrian signals, including ''Don't Walk''. Thus, the materials and environmental changes likely had the effect of ''positively reinforcing'' each other. Findings from this recently completed study reported a forty-six percent decrease in crashes involving older pedestrians within the zones. This was in contrast to an increase in crashes involving older pedestrians outside the zones during the program period.

Tools for Problem Identification

Jurisdictions seeking to counter pedestrian traffic safety problems have to deal with key issues such as determining the nature and extent of the problem and ways to impact identified problems in an efficient manner due to limited resources. Past Departmental research has developed methodologies that may be used to (1) identify areas (zones) within jurisdictions where countermeasures may be implemented for maximum impact and (2) identify the specific types of crashes occurring within these zones. This approach permits existing, refined or newly developed countermeasures which address the major pedestrian traffic safety problems to be disseminated in a cost effective manner.

Zoning Methodology

Jurisdictions have used school safety zones for years as a means of preventing crashes. In these zones, young children are protected by a combination of behavioral advice, enforcement of traffic laws, and engineering activities. Rather than using a facility, i.e., a school, for identifying where a zone should be located, recent research found that zones could be identified by locating areas within a jurisdiction where concentrations of crashes have occurred. A mapping methodology (either manual or incorporating a geographic information system) has been used to identify concentrations of crashes for older pedestrians and for pedestrian crashes involving alcohol. Once identified, countermeasures can be disseminated efficiently within the zones which comprise just a fraction of the entire jurisdiction or city land area. In Phoenix, for example, all of the zones comprised less than 5% of the land area. Use of such an approach can save thousands of dollars by focusing the countermeasures where they can do the most benefit. It is anticipated that the grantee will use this approach for identifying different sets of zones, each for a different subpopulation of pedestrians.

Crash Typing

Within identified zones, different kinds or types of crashes occur. These need to be identified so that appropriate countermeasures can be applied to impact them. During the 1970s, NHTSA identified more than thirty pedestrian crash types. This research went beyond simple identification of the normal demographic data available (e.g., time of day, day of week, gender, age of victim) to include information on the dynamics leading to the crash. Both predisposing factors (alcohol consumption, parked vehicles along the street) and precipitating factors (e.g., inadequate search, detection, or reaction by the pedestrian and driver) were identified that distinguished each crash type.

Subsequent work was conducted during the 1980s which permitted the identification of the various crash types by use of a process called Manual Accident Typing (MAT). With this tool, coders, by responding to a series of items, could readily classify crashes into their respective types. By using this process, a jurisdiction is able to identify its most significant pedestrian problems. Once identified, countermeasures can be used to impact predisposing and precipitating conditions so as to reduce the occurrence of these crashes. A software program called the Pedestrian and Bicyclist Crash Analysis Tool (PBCAT) is currently being prepared under the sponsorship of the FHWA and NHTSA. This tool, scheduled to be available by December 1998, will automatically classify crashes, build a data base and produce reports for use by the jurisdiction.

Countermeasure Ideas, and Materials Developed for Impacting Pedestrian Safety

Over the years, NHTSA and FHWA have developed a variety of countermeasures that can be used with specific target groups. Most of these address the problems of children, older pedestrians, and adults. Some address alcohol impaired pedestrians. Several of these countermeasures were conceptual in nature and not developed; others were developed but not tested in the field for positive behavioral change, and their crash reduction effects; still others were tested in the field for their effectiveness. It is anticipated that existing countermeasures may need to be refined, and that new countermeasures may need to be developed in support of this demonstration. For example, a jurisdiction or city may have a specific problem that has not been addressed in past Departmental work, e.g., alcohol-impaired pedestrians involving diverse racial/ethnic groups. Also, other existing countermeasures will be considered for implementation which can be justified to the government. The following provides a partial listing of products that were produced in the Department or elsewhere which are consistent with NHTSA/FHWA research. These and other products, as designed by the COTR, will be used by

the successful applicant in fulfilling the requirements of this agreement.

Preschool Children

Walking in Traffic Safely

A pedestrian safety program for preschoolers involving parents, teachers, and preschoolers. Safe areas (sidewalks) are distinguished from unsafe areas (roadways). Parents and other caretakers are instructed to be with the child or children when crossing the roadway. Materials are provided for parents, and teachers, and a set of storybooks with a safety theme are provided for children of different ages.

School-Age Children

Walk Ride Walk Getting to School Safely

These materials are based on research conducted by NHTSA. A school bus/pedestrian safety kit is available through the National Safety Council. It is a comprehensive safety program that covers walking to and from the bus stop, waiting for the bus, crossing the street to the bus, boarding the bus, etc. A set of teacher guides, videotapes and a poster are available, as are parent and bus driver materials.

Stop and Look With Willy Whistle and Walking With Your Eyes

These videos contain traffic safety advice for school age children from K–6th grade. The first video ''Stop and Look with Willy Whistle'' provides information on what steps are involved in safely crossing the street. The second video—''Walking with Your Eyes''—is geared to the older school-age child and provides information on how to cross the street at intersections, especially when signals are present. For example, information is provided on how to deal with turning vehicles, such as right turn on red and the meaning of lights and signals, such as the ''Don't Walk'' sign. The contents of these videos were tested in the field and associated with a substantial reduction in crashes.

Alcohol-Impaired Adults

Walk Smart Baltimore Program

This ongoing study developed TV and radio public service announcements (PSAs) and print materials (flyers, posters, etc.) that provided pedestrian safety advice; used engineering improvements such as nighttime lighting, analysis of parking setback violations, special pedestrian alert signs, and program banners; developed a police training video; and, provided retroreflective caps.

Older Pedestrians

Walking Through the Years

This brief paper describes the traffic safety problems facing older pedestrians and provides safety advice for older pedestrians and motorists. Information from this paper was incorporated in AAA materials, including a brochure, a flyer and a slide presentation.

Pedzone Study Materials

Public information and education (PI&E) materials included a video, ''Walking Through the Years'', that offers pedestrian safety advice for older pedestrians, five TV PSAs, and a set of 13 flyers for both pedestrians and motorists. There were also brochures, posters, bus cards, bumper stickers, radio PSAs and slides. These materials are the outgrowth of a rigorous research process to highlight behavioral errors that are amenable to change. Specific pedestrian risks addressed were turning cars, multiple threat and other visual screens, looking before entering the roadway, backing cars, parking lots, conspicuity, the fresh green signal, driveways and alleyways, and the meaning of flashing ''Don't Walk'' signs. Engineering activities included installing overhead pedestrian warning signs, improving crosswalks, installing signs explaining the meaning of the signal phases, etc. A Zone Guide, currently in draft form, will describe the process of conducting a zoning analysis. It is anticipated this product will be published by November, 1998.

Caminado a Traves de los Anos-Segurid Para Peatones de Tercera Edad (65+) (Walking Through the Years—Pedestrian Safety for Older (65+) Adult).

Pedestrian safety program materials include ''La Cita telenovela'', an illustrated brochure, a detailed report, and a slide show and presenter's guide that identifies pedestrian risks and suggested actions that can be taken to avoid crashes. These materials were specifically designed for use with spanish speaking audiences.

Objectives

Under this cooperative agreement the effectiveness of the combined pedestrian countermeasures program shall be demonstrated and evaluated to determine the impacts on reducing the traffic related injuries and associated costs within a large jurisdiction or city. Specific objectives of this cooperative agreement are as follows:

1. Conduct Complete Analysis of Pedestrian Safety Problem

Fulfilling this objective will involve applying the Zoning Process to identify concentrations of crashes within a large city or jurisdiction for different target groups. Once the zoning process is completed, common crash types will be identified by applying the MAT or, if available, PBCAT.

2. Use of Traditional and Non-Traditional Partners

One of the key components of this study is to assemble a cadre of partners that are dedicated to reducing crashes among pedestrians at the local level. These partners will be involved in all aspects of the demonstration, from analyzing the scope of the pedestrian problem, to identifying appropriate countermeasures, to monitoring the field evaluation and analyzing the data. Both traditional partners (e.g., State and local DOTs, including traffic engineers, national organizations, enforcement agencies, study design and evaluation specialists, local PTAs) and non-traditional (local public health organizations, hospitals, alcohol rehabilitation, etc.) shall be considered for inclusion. It should be mentioned that use of subcontractors to administer and/or evaluate the findings is acceptable.

3. Implement a Program To Reduce Traffic Related Injuries

The focus of the study is to reduce crashes among pedestrians. The partners shall develop a program that will be broad based in scope and that has the potential to impact all of the residents of the jurisdiction or city.

Representatives within the jurisdiction or city will design their own unique countermeasures program. Existing behavioral and engineering countermeasures will be examined and if appropriate applied as is. Other countermeasures will be refined or developed as needed. The key here is that the countermeasures developed will be designed to impact specific behavioral, engineering or environmental problems related to common crash situations or types.

4. Evaluate the Effectiveness of the Program

A process analysis as well as an impact analysis will be conducted to determine the effectiveness of the demonstration program. What worked and did not work during implementation is important for other jurisdictions interested in setting up a program of their own. A power analysis shall be conducted as part of the study

design activities. At a minimum, information on the effectiveness of the program for reducing crashes overall and within specific subpopulations, eg., school age children, older pedestrians, shall be provided.

Availability of Funds

A total of $400K will be made available to fund this program. Of this amount, $250K will be made available in FY'98 and the remaining funds ($150K) will be provided in FY'99, subject to available funds, for this demonstration and evaluation program. Of the total funds awarded, at least, $20,000 must be used to fund an on-site staffer who is dedicated to achieving the goals of this study. Also, at least 25% of the awarded amount must be devoted to evaluation activities. Additional funds may become available to fund a second demonstration project in FY'99 or FY'2000. This demonstration project will be conducted for a period of up to four years. Given the amount of funds available for this effort, applicants are strongly encouraged to seek other funding sources to supplement the federal funds and include cost sharing plans and commitments.

Period of Performance

Performance of this cooperative agreement will be four years (48 months) from the effective date of award.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of this Cooperative Agreement and to coordinate activities between the Grantee and NHTSA.
2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.
3. Serve as a liaison between NHTSA Headquarters, Regional Offices and others (Federal state and local) interested in the application of this comprehensive pedestrian program and the activities of the grantee.
4. Stimulate the transfer of information among those engaged in pedestrian traffic safety activities.

Eligibility and Other Applicant Requirements

A sufficient number of pedestrian crashes per year is required so that appropriate statistical techniques can be used to determine the effectiveness of various countermeasures for reducing crashes and injuries overall, and among various subpopulations within the city or jurisdiction.

Therefore, only cities or jurisdictions with at least 500,000 people will be considered for inclusion in this demonstration. Applicants may, in conjunction with representatives from a large city or jurisdiction, submit a proposal to conduct this demonstration study. Applications may be submitted by public and private, non-profit, and not-for-profit organizations, and governments and their agencies or a consortium of the above. Thus, universities, colleges, research institutions, other public and private oganizations and state and local governments are eligible to apply. Interested applicants are advised that no fee or profit will be allowed under this cooperative agreement program. This demonstration project will require extensive collaboration among the various organizations to achieve the program objectives.

Application Procedures

Each applicant must submit one original and two copies of the application package to NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Lamont Norwood, 400 7th Street, SW., Room 5301, Washington, DC 20590. Submission of three additional copies will expedite processing but is not required. Applications must be typed on one side of the page only, and must include a reference to NHTSA Cooperative Agreement No. DTNH22–98–H–05183. Only complete packages received on or before 4 p.m. on July 31, 1998 will be considered.

Application Contents

Applications for this program must include the following information:

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), application for Federal Assistance, with the required information filled in and certified assurances signed. While form 424 deals with budget information, and Section B identified Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant indicates will be contributed by other sources in support of the demonstration study.

2. The application shall include a narrative which addresses the following items.

a. A statement of goals and objectives of the project as interpreted by the applicant.

b. A description of the city in which the applicant proposes to work. For the purposes of this program, a large city is defined here as a city with a population of 500,000 or more. It should be large enough so that the program can support an impact evaluation and yield meaningful results. The description should include city demographics, including any information on diverse racial/ethnic groups, three years of data on the city's overall traffic safety problem, a listing of available data sources, the types of data collected, e.g., police files, hospital or trauma center records, and how the data will be accessed.

c. A description of the city's overall pedestrian crash problem and for different subgroups, e.g., older and younger pedestrians. Data shall include both fatality and injury data. Also, a description of the procedure that will be used to conduct a zoning analysis and identification of concentrations of crashes for different target groups, including young children, older pedestrians and alcohol involved pedestrians. As part of the application the applicant shall identify and describe the qualifications of the person conducting this analysis. For more information, see Reporting Requirements and Deliverables section (b) Problem Identification Report.

d. An Implementation Plan that describes the types of interventions or activities proposed to achieve the objectives of the demonstration project. How will priorities be set for the different interventions? How will the respective roles of the various parties be determined, monitored and modified if needed? What types of interventions will be considered? How will government-provided materials be used in countermeasure implementation? The implementation plan shall also address prospects for program continuation beyond the period of Federal assistance. A milestone chart with proposed deadlines (weeks after award) shall be included as part of the Implementation Plan.

e. A proposed Evaluation Plan that at a minimum shall contain the following:

1. The study design proposed and whether a control or matching procedure will be used;

2. The types of process and impact data collected;

3. The duration of the data collection period, including predelivery, delivery (of countermeasures), and post delivery;

4. What the (outcome) measures are expected to be and how they will be measured;

5. How often the data will be collected, and how the data will be analyzed;

6. How action undertaken by the community will be linked with the outcome measures;

7. How the collected data may be disaggregated to provide relevant population; and subpopulation data. (For more information see Objectives, Item 4, Evaluate the Effectiveness of the Program.)

f. A description of the full working partnership that has been or will be established to conduct the Comprehensive Pedestrian Safety program. The application shall describe all the partners that will participate in the program (e.g., local city and state government, law enforcement, education, media) and what the role for each partner will be. A complete set of letters of commitment, written by major partners, organizations, and groups proposed for study involvement, shall detail what each partner is willing to do over the course of the program (provide data, staff, in-kind resources, etc.). Form letters that do not specifically address these issues will not be acceptable. Letters from owners of the data required for successful completion of this project also must be submitted. These letters must indicate that the data required for the project are accessible to the project team.

g. A description of how the project will be managed both at the grantee level and at the local level. The application shall identify the proposed project manager and any support personnel considered critical to the successful accomplishment of the project objectives, including a description of their qualifications and respective organizational responsibilities. The roles and responsibilities of the grantee, the local level staff and any others included in the application package also shall be specified. The proposed level of effort in performing the various activities shall be identified. A staffing plan and resume for all key personnel shall be included in the application.

h. A dissemination plan that describes how the results from this demonstration may be shared with other interested parties. The plan should include materials, e.g., a how-to guide for developing and implementing a comprehensive pedestrian safety program in other communities, and delivery mechanisms. Also, proposed presentations and submission of articles to peer review journals shall be included as part of the plan.

i. A separately labeled section of the document shall be prepared with information demonstrating that the applicant meets all of the following special competencies.

1. Knowledge and experience accessing and using relevent data sources such as police crash reports, hospital data collection procedures, and to the extent possible, injury cost data (e.g., costs of injuries in the city).

2. Experience in designing comprehensive program evaluations, collecting and analyzing both qualitative and quantitative data and synthesizing, summarizing and reporting evaluation results which are readily understandable to lay and technical audiences. Also, demonstrated experience in designing comprehensive program manuals or guides. An example of a manual or guide produced should be submitted, if available.

3. Experience in field research, and in working cooperatively in partnerships with governmental agencies, media, local organizations and others in implementing solutions to traffic safety problems.

4. Experience in implementing pedestrian crash reduction programs at the local level.

j. A dissemination plan that describes how the results from this demonstration may be shared with other interested parties. The plan should include materials, e.g., a how-to guide for developing and implementing a comprehensive pedestrian safety program in other communities, and delivery mechanisms. Also, presentations and submissions of articles to peer reviewed journals shall be part of the plan.

Application Review Process and Evaluation Factors

Each application package will initially be reviewed for eligibility (See Eligibility and Other Applicant Requirements section of this announcement). Each complete application from an eligible recipient will subsequently be reviewed by an evaluation committee. The applications will be assessed using the following criteria:

1. Goals, Objectives and Implementation Plan (25%)

The extent to which the applicant's goals are clearly articulated, the objectives are time-phased, specific, measurable and achievable and the goals and objectives relate to identified problems. The extent to which the implementation plan will achieve an outcome-oriented result that will reduce pedestrian related injuries and, to the extent possible, costs to the city. The implementation plan will be evaluated in terms of its feasibility, realism, and ability to achieve the desired outcomes as well as prospective plans for program continuation beyond the period of Federal assistance. For more information, see application contents, items 2a and d.

2. Understanding Pedestrian Safety Problem and Problem Identification (15%)

The applicant's capacity to demonstrate an understanding of the theory and findings of NHTSA's and FHWA's research efforts relating to pedestrian crash typing and the zoning process for identifying concentrations of pedestrian crashes within the city. Also, the applicant's ability to identify the significance of the pedestrian safety problem within the overall traffic safety problem and to identify among the residents involved in pedestrian-related crashes the populations involved, types and locations of crashes, types of vehicles, and the types of injuries incurred. For more information, see application contents, item 2c.

3. Collaboration (15%)

The extent to which the applicant has demonstrated experience in a full working partnership for data acquisition and analysis, design, implementation and evaluation of a city/community based program; and the extent to which such a partnership has been established among the applicant and critical components in the city/community representing various elements within and outside of the traditional traffic safety community. The extent to which commitment has been demonstrated by the various partners and the roles of each are specified. For more information, see application contents, item 2f.

4. Evaluation Plan (15%)

How well the applicant describes the proposed evaluation plan design and the methods for measuring the processes and outcomes of the proposed interventions (countermeasures). How well the measures described provide useful information on the effectiveness of the comprehensive pedestrian countermeasures program? Does the applicant provide sufficient evidence that the proposed partners are sufficiently committed to evaluation? Are there sufficient resources or capacity to ensure access to needed

data, and the collection and analysis of qualitative and quantitative data for measuring the effectiveness of the comprehensive pedestrian countermeasure program? See application contents, item 2e, for more information.

5. Special Competencies (15%)

The extent to which the applicant has demonstrated knowledge and experience accessing and using relevant data sources, designing and implementing comprehensive program evaluations, implementing problem identification and countermeasure development and test programs, and working in partnerships with others on the local (city) level. For more information, see application contents, item 2i.

6. Project Management and Staffing (15%)

The extent to which the proposed staff, including management, program staff and local (city) partners are clearly described, appropriately assigned, and have adequate skills and experiences.

The extent to which the applicant has the capacity and facilities to design, implement, and evaluate a complex and comprehensive local (city) program. The extent to which the applicant provides details regarding the level of effort and allocation of time for each staff position. See application contents, item 2g, for more information.

Special Award Selection Factors

Applicants are strongly encouraged to seek funds for the purpose of cost-sharing from other Federal, State, local and private sources to augment those available under this announcement. Applications which include a commitment of such funds will be given additional consideration.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR Part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirements and Deliverables:

a. Quarterly Progress Reports should include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report. The grantee shall supply the progress report to the Contracting's Officer's Technical Representative (COTR) every ninety (90) days following the date of award.

b. Problem Identification Report: The grantee shall submit a Problem Identification Report within six months after award. This report will describe the overall pedestrian safety problem, within the city and by subpopulation. Subpopulations to be described will include at a minimum, school age children, older pedestrians (65+ years of age and older) and crashes involving alcohol-impaired pedestrians. Also, information on crashes involving different racial and ethnic groups shall be presented as part of the report. A crash typing analysis will be conducted to determine the types of crashes occurring within the city. This analysis will be based on the MAT coding procedure or, if available, the software package containing the (PBCAT).

The grantee shall conduct a zone analysis to determine those areas within the city that contain the highest concentration of crashes. The zone process will be applied to each target group of significance using the crash analysis tool. The Problem Identification Report will contain the grantee's recommendations on the most critical groups of pedestrians within the city that require a comprehensive countermeasures program as well as information on the areas within the city where pedestrian crashes occur most often. The NHTSA COTR will review and comment on this report.

c. Program Implementation and Evaluation Plan (PIEP): Within nine months the grantee shall submit a refined Program Implementation and Evaluation Plan. This plan will describe the approach recommended for determining the effectiveness of the Comprehensive Pedestrian Countermeasures program. Information will be provided on target groups to be addressed, partners involvement, the types of countermeasures (e.g., behavioral, engineering and enforcement) that will be used during field implementation, the extent of countermeasure refinement and development, the dissemination mechanisms that will be used, the areas within the city receiving countermeasures. A set of refined milestones will be presented with a listing of countermeasures and expected dates of administration. This PIEP shall be submitted to the COTR and within 30 days comments will be received from the government and incorporated in the PIEP.

d. Draft Final Report and Draft ''How-To'' Manual: The grantee shall prepare a draft final technical report that includes a description of the city, and its pedestrian traffic safety problem, overall and for different subgroups, the partners, intervention strategies, program implementation activities, evaluation methodology and findings from the program evaluation. The grantee shall answer the question: Did the program impact the pedestrian safety problem and, if so, to what extent? Also, what was the impact of the countermeasures program on crashes among different subgroups such as young children, older adults and alcohol impaired pedestrians.

The grantee shall also prepare a Draft ''How-To'' Manual that describes what happened in the community in establishing the Comprehensive Pedestrian Countermeasures program and provides advice on ways to set up a similar program in different communities. Included in this manual will be information on the use of crash typing and zoning methodologies as precursors to countermeasure development; the types of countermeasures needed, the process used to decide which countermeasures to pursue; the dissemination mechanisms used; the extent to which the countermeasures were implemented; the reactions of those who were responsible for disseminating the countermeasures; and if possible, those impacted by these countermeasures. Also, advice shall be presented on what worked and what did not work; how the various partners interacted; and the lessons learned to avoid potential problems in other communities. The grantee shall submit four copies of the Draft Final Report and Draft How-To Manual to the COTR 90 days prior to the end of the performance period. The COTR will review the draft document and provide comments to the grantee.

e. Final Report and Final Version of ''How-to'' Manual: The grantee shall revise the Draft Final Technical Report and Draft How-to Manual to reflect the COTR's comments. The final documents, as revised, shall be delivered to the COTR on or before the end of the performance period. The grantee shall submit to the COTR one camera ready copy and four additional hard copies of each final document. In addition, the grantee shall prepare these publications for printing and incorporation into the World Wide Web. (See attached printing and web guidance.)

f. Meetings and Briefings. The grantee shall plan to participate in two working sessions per year in Washington, DC.

These meetings will last up to four hours. The exact dates shall be decided by mutual consent of the COTR and grantee. In addition, the grantee shall plan for a presentation at one national meeting (e.g., Lifesavers, Pro-Bike Pro-Walk) per year.

g. Professional Journal Paper: The grantee shall prepare and submit at least one paper for publication in a professional journal if deemed appropriate by the COTR.

3. During the effective performance period of the cooperative agreement awarded as a result of this announcement, the agreement shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements.

James Nichols,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 98–17511 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–3891; Notice 12]

Pipeline Safety: Intent To Approve Project and Environmental Assessment for the Mobil Pipe Line Company Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of Intent to Approve Project and Environmental Assessment.

SUMMARY: As part of its Congressional mandate to conduct a Risk Management Demonstration Program, the Office of Pipeline Safety (OPS) has been authorized to conduct demonstration projects with pipeline operators to determine how risk management might be used to complement and improve the existing Federal pipeline safety regulatory process. This is a notice that OPS intends to approve Mobil Pipe Line Company (Mobil) as a participant in the Pipeline Risk Management Demonstration Program. This also provides an environmental assessment of Mobil's demonstration project. Based on this environmental assessment, OPS has preliminarily concluded that this proposed project will not have significant environmental impacts.

This notice explains OPS's rationale for approving this project, and summarizes the demonstration project provisions (including affected locations, risk control and monitoring activities, and regulatory exemptions) that would go into effect once OPS issues an order approving Mobil as a Demonstration Program participant. OPS seeks public comment on the proposed demonstration project so that it may consider and address these comments before approving the project. The Mobil demonstration project is one of several projects OPS plans to approve and monitor in assessing risk management as a component of the Federal pipeline safety regulatory program.

ADDRESSES: OPS requests that comments to this notice or about this environmental assessment be submitted on or before July 31, 1998 so they can be considered before project approval. However, comments on this or any other demonstration project will be accepted in the Docket throughout the 4-year demonstration period. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number RSPA–98–3891. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Pipeline Safety (OPS) is the federal regulatory body overseeing pipeline safety. As a critical component of its federal mandate, OPS administers and enforces a broad range of regulations governing safety and environmental protection of pipelines. These regulations have contributed to a good pipeline industry safety record by assuring that risks associated with pipeline design, construction, operations, and maintenance are understood, managed, and reduced. Preserving and improving this safety record is OPS's top priority. On the basis of extensive research, and the experience of both government and industry, OPS believes that a risk management approach, properly implemented and monitored, offers opportunities to achieve:

(1) Superior safety, environmental protection, and service reliability;

(2) Increased efficiency and reliability of pipeline operations; and

(3) Improved communication and dialogue among industry, the government, and other stakeholders.

A key benefit of this approach is the opportunity for greater levels of public participation.

As authorized by Congress, OPS is conducting a structured Demonstration Program to evaluate the use of a comprehensive risk management approach in the operations and regulation of interstate pipeline facilities. This evaluation will be performed under strictly controlled conditions through a set of Demonstration Projects to be conducted with interstate pipeline operators. A Presidential Directive to the Secretary of Transportation (October 16, 1996) stated that in implementing the Pipeline Risk Management Demonstration Program: ''The Secretary shall require each project to achieve superior levels of public safety and environmental protection when compared with regulatory requirements that otherwise would apply.'' Thus, the process to select operators for this Demonstration Program involves a comprehensive review to ensure that the proposed project will provide the superior safety and environmental protection required by this Directive. OPS may exempt a participating operator from particular regulations if the operator needs such flexibility in implementing a comprehensive risk management program; however, regulatory exemption is neither a goal nor requirement of the Demonstration Program. This document summarizes the key points of this review for Mobil's demonstration project, and evaluates the safety and environmental impacts of this proposed project.

2. OPS Evaluation of Mobil's Demonstration Project Proposal

Using the consultative process described in Appendix A of the Requests for Application for the Pipeline Risk Management Demonstration Program (62 FR 14719), published on March 27, 1997, OPS has reached agreement with Mobil Pipe Line Company on the provisions for a demonstration project to be conducted at a crude oil storage tank facility in Patoka, Illinois.

Company History and Record

Mobil Pipe Line Company currently owns approximately 5409 miles of

hazardous liquid pipeline throughout nine states. The Patoka, Illinois crude breakout facility is located within the city limits of Vernon, Illinois, population about 150, in Mobil's East of the Rockies (EOR) operating region.

Before entering into consultations with Mobil, OPS determined that Mobil was a good demonstration program candidate based on an examination of the company's safety and environmental compliance record, its accident history, and its commitment to working with OPS to develop a project meeting the Demonstration Program goals.

In considering the merits of Mobil's proposal, OPS undertook a comprehensive review of the company's safety and compliance record for the demonstration project location, as well as Mobil's entire East of the Rockies (EOR) system. Mobil, like all operating companies, has experienced incidents at its facilities within and outside the United States. In the last five years, the only incident at Patoka of sufficient impact that required reporting to OPS occurred on March 7, 1995. A roof drain hose failed due to ice formation during sub-zero temperatures. This event resulted in no injuries, and the company reported that 196 of the 200 barrels spilled were recovered.

Considering the frequency, causes, and consequences of these events, together with Mobil's response to these events, OPS has concluded that Mobil has demonstrated the corporate commitment to safety and environmental protection required of demonstration program candidates.

Mobil has also demonstrated a strong working relationship with emergency response personnel from federal and state agencies. Mobil recently participated in a successful emergency drill with representatives from OPS, the Environmental Protection Agency (EPA), and the Coast Guard. Local and state participants from Illinois and Missouri played active roles in this exercise.

Consultative Evaluation

During the consultations, OPS headquarters and Central Region representatives, an Illinois pipeline safety official, and risk management experts, met with Mobil to discuss Mobil's Environment, Health, and Safety Management System (EHSMS). These discussions included the programmatic and technical processes associated with the risk management element of the EHSMS, the specific risk assessments that Mobil has or will perform as part of this program, other supporting analyses Mobil performed, proposed risk control activities to address identified risks, and proposed performance measures to ensure superior performance is being achieved. The discussions addressed the adequacy of Mobil's management systems and technical processes, demographics near the demonstration facility, communications with outside stakeholders, and monitoring and auditing of results once the demonstration project is underway. The consultation process also included an environmental assessment, which is described in the appendix to this notice.

The consultation process was structured around three major review criteria:

1. Whether Mobil's proposed risk management demonstration program is consistent with the Risk Management Program Standard and compatible with the Guiding Principles set forth in that Standard;

2. Whether the specific risk control activities that will result from Mobil's proposed risk management program are expected to produce superior safety, environmental protection, and reliability of service compared to that achieved from compliance with the current regulations;

3. Whether Mobil's proposed risk management demonstration program includes a company work plan and a performance monitoring plan that will provide adequate assurance that the expectations for superior safety, environmental protection, and service reliability are actually being achieved during implementation.

The demonstration project provisions described in this notice evolved from these consultations, as well as any public comments received to date. Once OPS and Mobil consider comments received on this notice, OPS plans to issue an order approving the Mobil demonstration project.

3. Statement of Project Goals

OPS and Mobil believe Mobil's demonstration project will improve safety and environmental protection through the application of the Mobil EHSMS, which includes numerous hazard and risk assessments and risk control activities beyond current regulatory requirements. Specifically, the project will focus on safety and environmental issues associated with breakout tanks and tank facilities, and will demonstrate the adequacy of Mobil's release prevention and tank integrity programs. The project will help demonstrate how Mobil's release prevention activities will work in conjunction with proposed American Petroleum Institute (API) aboveground storage tank standards and National Fire Protection Association (NFPA) codes on flammable and combustible liquids. OPS has issued a notice of proposed rulemaking that would incorporate by reference selected industry standards for breakout tanks into 49 CFR Part 195. (see **Federal Register** Notice 63 FR 27903, published 05/21/98.) Information and insights from the Mobil project will help OPS determine if the proposed regulations effectively address the most important risks at tank facilities, and help operators define the most effective means of addressing these risks.

The Patoka crude breakout tank facility will be the initial focus of the Mobil demonstration project. Mobil has conducted a thorough and systematic hazard analysis and risk assessment to identify hazards and risks associated with operating the facility. Mobil invited OPS to observe these assessments. Based on these risk assessments, Mobil has identified potential corrective actions for various systems at the facility, including piping, pumps, communications, fire water system, utility/support systems, and cast iron valves. During the demonstration project, Mobil will identify the specific risk control activities that are expected to result in reduced risk and superior safety and reliability at the facility. These risk control activities will exceed the requirements of the current regulations.

Through these activities at Patoka, both Mobil and OPS will improve their understanding of risks associated with tanks and the most effective risk control activities to manage these risks. Mobil will use this information to assure superior performance at Patoka and, as appropriate, at other Mobil tank facilities. OPS will use the additional information to assure that Mobil and OPS fully understand the major risks of the Patoka facility and that Mobil is implementing effective risk control activities, specific to the Patoka facility.

Mobil seeks no relief from current pipeline safety regulations governing the operation of the Patoka facility. The Patoka facility would be exempt from compliance with any new regulations that are not consistent with the approved risk management activities and OPS would continue to monitor Mobil's performance under the risk management order to assure that superior performance is being achieved.

4. Demonstration Project Facility:

The Patoka facility is located within the city limits of Vernon, Illinois, a town with a population of about 150. The surrounding area is also low population density. The facility contains 22 vertical aboveground crude

storage tanks, plant transfer piping, transfer pumps, crude oil blenders, offices, a maintenance building, miscellaneous auxiliary pipeline station equipment, and the station manager's personal residence. Patoka is a self-contained facility, with no public roads traversing the property. The North Fork Creek, which runs along the south end of the Patoka facility, is a water supply for the city of Patoka. Mobil protects the creek by maintaining a second physical barrier surrounding each tank that is capable of holding more than the entire contents of the tank. Mobil has provided additional precautionary barriers to releases of product along the south end of its Patoka facility.

The facility is used as a common carrier crude pipeline handling facility. Products handled at the facility include crudes of varying sulphur content from the US Gulf Coast and Canada, and petroleum condensate. The products include both ''sour'' crude (oil with a total sulphur content above one percent), and ''sweet'' crude (oil with little or no sulphur impurities).

5. Project Description

In 1996, Mobil updated its Corporate Policy on Environment, Health, and Safety (EHS). To fulfill the commitments in the EHS Policy, Mobil has adopted an Environmental, Health, and Safety Management System (EHSMS). The EHSMS is the vehicle for institutionalizing a comprehensive and integrated risk management program throughout Mobil. The primary objective of the Mobil project is to demonstrate that implementing the EHSMS will lead to superior performance, improved safety and environmental protection.

Mobil's environment, health, and safety program includes 11 key elements and 56 specific management ''expectations''. An ''expectation'' within the EHSMS is a well-defined objective and includes identification of those accountable and responsible for achieving the objective, the documentation required to demonstrate achievement, performance indicators, and the key corporate resources that will be used to achieve the objective.

The 11 elements are:

1. Policy and Leadership.
2. Continuous Improvement.
3. Safety and Health.
4. Risk Management.
5. Incident Reporting and Investigation.
6. Crisis Preparedness.
7. Environmental Protection.
8. Product Stewardship.
9. Training.
10. Community Relations.
11. Legal Requirements.

The Risk Management element of the program (Element #4) has four expectations:

4.1 A system is in place to identify environment, health, and safety hazards and their potential consequences.

4.2 A system is in place to assess and prioritize risks and manage them in a cost-effective manner.

4.3 A system is in place to review the design of new and modified facilities to ensure the incorporation of appropriate environment, health, and safety protection measures.

4.4 Risks associated with the acquisition, closure and divestment of facilities and operations are assessed and managed.

Mobil has structured and documented processes in place for performing the hazards analyses, risk assessments, and job safety analyses, prioritizing risks, defining risk control activities, and evaluating and prioritizing risk control activities required to meet the corporate expectations. These structured analytical and management processes also satisfy the requirements of the Risk Management Program Standard.

The Mobil EHSMS also includes structured processes for qualifying and training personnel in risk assessment, and integrating the risk assessment program with other Mobil operating and business systems, including those processes used by Mobil to ensure that proposed changes to the physical design of the system or to the maintenance and operating procedures of the system are carefully considered, documented, and communicated.

Mobil's East of the Rockies (EOR) business unit, which is responsible for the Patoka facility, has defined the accountabilities, responsibilities, documentation requirements, and performance indicators for management expectations, including the four risk management expectations. A business unit review of how Mobil's EOR Business Unit is implementing the EHSMS was performed in the First Quarter of 1998, and no significant deficiencies were reported. Business unit reviews will occur annually.

Mobil has performed the required hazards assessment, job safety analyses, and risk assessment of its Patoka facility. Mobil has identified a variety of potential risk control activities to address the identified risks including improvements to piping, pumps, communications, fire water system, utility/support systems, and cast iron valves. During the demonstration project, Mobil will identify the specific set of risk control activities that will best manage the risks identified. Mobil will continue to perform all of the preventive measures and risk control activities currently in effect. In addition, through the EHSMS process, Mobil has identified facility-specific hazards and concerns that were not specifically or adequately addressed through compliance with current DOT regulations. The risk analyses that Mobil has performed are beyond the requirements of the current regulations.

Mobil has defined performance indicators for management expectations, including performance indicators for the four risk management expectations discussed previously. Mobil tracks several high level EHS performance indicators including the number of environmental incidents, DOT and OSHA reportable incidents, and lost work days. The financial compensation for Mobil employees is tied to these performance measures. Ongoing audits and assessments, conducted as part of the Continuous Improvement element (Element #2 of the EHSMS), assure that all expectations have been met.

The activities below would be included in an Order formally approving the Mobil demonstration project:

- Share information with OPS concerning the use of hazards analyses, risk screening tools, and other risk assessment and prioritization tools;
- Share information with OPS concerning facility-specific risks at Patoka;
- Share information with OPS concerning the preventive and risk control activities Mobil has identified to address these risks and their relative priority;
- Implement the risk control activities selected for Patoka;
- Share information with OPS concerning the lessons learned on institutionalizing risk management programs to help OPS in evaluating the effectiveness of risk management programs; and
- Track, monitor, and report performance measures selected to determine the effectiveness of the risk control activities selected for Patoka, and the Mobil risk management program in general.

Monitoring Demonstration Project Effectiveness

The Mobil Demonstration Project includes a comprehensive approach to performance monitoring that assures the superior protection of public safety and the environment, and achieves other project objectives. A key element of this monitoring plan is a set of programmatic performance measures that would track the growth and institutionalization of

risk management within the company, measure the effectiveness of the EHSMS in achieving stated expectations, and measure the effectiveness of specific risk control activities. Mobil uses a simple, three point scale to score performance in implementing the Mobil EHSMS:

0=No Evidence That Expectation is Being Met
1=Expectation is Partially Met
2=Expectation is Fully Met
B=Best Practice (equivalent to a ''2'' for roll-up purposes)

Mobil will report performance measurement data and project progress quarterly to OPS throughout the four year demonstration period. This information, as well as periodic OPS audits, will assure accountability for improved performance.

6. Regulatory Perspective

Why Is OPS Considering This Project?

OPS is considering Mobil's proposed project for the Demonstration Program because, after extensive review, OPS is satisfied that the proposal:

1. Provides superior safety and environmental protection for the Patoka facility. Mobil has adequately demonstrated that the risk control activities it will perform at Patoka go beyond current pipeline safety regulatory requirements and, thus, provide a higher level of public safety and environmental protection than exists today.

2. Offers a good opportunity to evaluate risk management as a component of the Federal pipeline safety regulatory program. OPS believes the Demonstration Program could benefit from Mobil's participation, given some of the distinguishing features of its proposed demonstration project, including:

- A fully-institutionalized, integrated, corporate-wide risk management program with documented roles, responsibilities, and accountabilities;
- Comprehensive evaluation of the hazards and risks of the facility;
- A structured and documented approach for identifying and evaluating the relative merits of risk control activities through a multi-attribute decision process;
- A good illustration of how companies can use risk management to improve safety and environmental protection over and above current regulatory requirements;
- Willingness to share information with OPS and state pipeline safety agencies on the specific risks associated with the facility, as well as its risk management program and processes.

3. Provides valuable information about the risks and effective risk control activities for aboveground storage tanks. This additional information will allow OPS to more effectively ensure

4. Safe operation of Patoka, and be better able to develop, apply, and enforce regulations related to aboveground storage tanks.

How Will OPS Oversee This Project?

OPS retains its full authority to administer and enforce all regulations governing pipeline safety. Mobil is not requesting any regulatory exemptions. The Patoka facility will be subject to the routine OPS inspection to ensure compliance with the applicable Federal Pipeline Safety Regulations. In addition, subsequent to approval, a Project Review Team (PRT) consisting of OPS headquarters and regional staff and state pipeline safety officials who have been reviewing the proposal, will continue to monitor the project. The PRT is designed to be a more comprehensive oversight process which draws maximum technical experience and perspective from all affected OPS regional and headquarters offices as well as any affected state agencies that would not normally provide oversight on interstate transmission projects.

One of the primary functions of this Team will be to conduct periodic risk management audits. These risk management audits will be used to ensure company compliance with the specific terms and conditions of the OPS Order authorizing this Demonstration Project. OPS is developing a detailed audit plan, tailored to the unique requirements of the Mobil Demonstration Project. This plan will describe the audit process (e.g., types of inspections, methods, points of disclosure of risk assessment information, frequency of audit), as well as the specific requirements for reporting information and performance measurement data to OPS.

Information Provided to the Public

OPS has previously provided information to the public about the Mobil project, and has requested public comment, using many different sources. OPS aired an electronic town meeting on September 17, 1997 that enabled viewers of the two-way live broadcasts to pose questions and voice concerns about candidate companies (including Mobil). An earlier **Federal Register** notice (62 FR 53052; October 10, 1997) informed the public that Mobil was interested in participating in the Demonstration Program, provided general information about technical issues and risk control alternatives to be explored, and identified the geographic areas the demonstration project would traverse.

Since August 1997, OPS has used an Internet-accessible data system called the Pipeline Risk Management Information System (PRIMIS) at http://www.cycla.com/opsdemo to collect, update, and exchange information about all demonstration candidates, including Mobil.

At a November 19, 1997, public meeting hosted by OPS in Houston, TX, Mobil officials presented a summary of the proposed demonstration project and answered questions from meeting attendees. (Portions of this meeting were broadcast on January 15, 1998, 2:00 p.m. Eastern Standard Time, via satellite to locations nationwide and via Internet to individuals at their personal computers). OPS featured members of the Patoka community on a satellite/Internet nationwide broadcast which aired March 26, 1998. The school superintendent, fire chief, and mayor were among the citizens who remarked on community relations, training programs, exercises, spill drills, and other interactions between the company and citizens. In addition to viewers of the live broadcast at sites throughout the nation, the Internet broadcast received over 4300 hits.

OPS has provided a prospectus, which includes a map of the demonstration sites, to State officials and community representatives who may be interested in reviewing project information, providing input, or monitoring the progress of the project. This notice is OPS's final request for public comment before OPS intends to approve Mobil's demonstration project. So far, the public has not raised any issues or concerns related to the Mobil proposal.

Issued in Washington, DC on June 25, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

Appendix—Environmental Assessment

A. Background and Purpose

A Presidential Directive to the Secretary of Transportation (October 16, 1996) stated that in implementing the Pipeline Risk Management Demonstration Program: ''The Secretary shall require each project to achieve superior levels of public safety and environmental protection when compared with regulatory requirements that otherwise would apply.'' Thus, the process to select operators for this Demonstration Program involves a comprehensive review to ensure that the proposed project will provide the superior safety and environmental protection required by this Directive. This document summarizes the key points of this review for Mobil Pipe Line Company's (Mobil)

demonstration project, and evaluates the safety and environmental impacts of this proposed project.

This document was prepared in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. Section 4332), the Council on Environmental Quality regulations (40 CFR Sections 1500–1508), and Department of Transportation Order 5610.1c, Procedures for Considering Environmental Impacts.

B. Description of Proposed Action

Mobil will conduct its demonstration project at its crude oil breakout storage tank facility in Patoka, Illinois. Mobil has adopted an Environment, Health, and Safety Management System (EHSMS) to institutionalize a comprehensive and integrated risk management program throughout the company. The proposed project's primary objective is to demonstrate that implementing the Mobil EHSMS will lead to superior performance, improved safety and environmental protection. The project will focus on safety and environmental issues associated with breakout tanks and tank facilities, and will demonstrate the adequacy of Mobil's release prevention and tank integrity programs.

As a result of a comprehensive review of Mobil's risk management demonstration project, the Office of Pipeline Safety (OPS) proposes to approve this project for participation in the Demonstration Program.

The Risk Management element of Mobil's EHSMS (Element #4) contains four expectations:

4.1 A system is in place to identify environment, health, and safety hazards and their potential consequences.

4.2 A system is in place to assess and prioritize risks and manage them in a cost-effective manner.

4.3 A system is in place to review the design of new and modified facilities to ensure the incorporation of appropriate environment, health, and safety protection measures.

4.4 Risks associated with the acquisition, closure and divestment of facilities and operations are assessed and managed.

Each ''expectation'' within the EHSMS contains a well-defined objective and includes identification of those accountable and responsible for achieving the objective, the documentation required to demonstrate achievement, performance indicators, and the key corporate resources that will be used to achieve the objective.

Mobil has structured and documented processes in place for performing the hazards analyses, risk assessments, job safety analyses, prioritizing risks, defining risk control activities, and evaluating and prioritizing risk control activities required to meet the corporate expectations. These structured analytical and management processes also satisfy the requirements of the Risk Management Program Standard.

The Mobil EHSMS also includes structured processes for qualifying and training personnel in risk assessment, and integrating the risk assessment program with other Mobil operating and business systems, including those processes used by Mobil to ensure that proposed changes to the physical design of the system, or to the maintenance and operating procedures of the system, are carefully considered, documented, and communicated.

Mobil is performing the required hazards assessment, job safety analyses, and risk assessment of its Patoka facility and will identify a set of risk control activities to effectively manage the risks identified. Mobil requests no exemptions from the current pipeline safety regulations. Mobil will continue to perform all of the preventive measures and risk control activities that are presently in effect. In addition, through the EHSMS process, Mobil has identified facility-specific hazards and concerns that were not specifically or adequately addressed through compliance with current pipeline safety regulations. The analyses that Mobil has performed and the risk control activities that Mobil will perform are beyond the requirements of the current regulations.

Mobil will define performance indicators for each of the 56 management objectives in the EHSMS. The financial compensation for Mobil employees is tied to these performance measures. Ongoing audits and assessments, conducted as part of the Continuous Improvement element of EHSMS (Element #2), will assure that all expectations are being met.

The activities below would be included in an Order formally approving the Mobil demonstration project:

- Share information with OPS concerning the use of hazards analyses, risk screening tools, and other risk assessment and prioritization tools;
- Share information with OPS concerning the facility-specific risks at Patoka;
- Share information with OPS concerning the preventive and risk control activities Mobil has identified to address these risks and their relative priority;
- Implement the risk control activities selected for Patoka;
- Share information with OPS concerning the lessons learned on institutionalizing risk management programs to help OPS in evaluating the effectiveness of risk management programs;
- Track, monitor, and report performance measures selected to determine the effectiveness of the risk control activities selected for Patoka, and the Mobil risk management program in general.

Monitoring Demonstration Project Effectiveness

The Mobil Demonstration Project includes a comprehensive approach to performance monitoring that assures the superior protection of public safety and the environment, and achieves other project objectives. A key element of this monitoring plan is a set of programmatic performance measures that would track the growth and institutionalization of risk management within the company, measure the effectiveness of the EHSMS in achieving stated expectations, and measure the effectiveness of specific risk control activities.

Mobil will report performance measurement data and project progress regularly to OPS throughout the four year demonstration period. This information, as well as periodic OPS audits, will assure accountability for improved performance.

More detailed descriptions of all aspects of the Mobil proposal and OPS rationale for approving the project are available to the public via the Pipeline Risk Management Information System (PRIMIS), at http://www.cycla.com/opsdemo.

C. Purpose and Need for Action

As authorized by Congress, OPS is conducting a structured Demonstration Program to evaluate the use of a comprehensive risk management approach in the operations and regulation of interstate pipeline facilities. This evaluation is being performed under strictly controlled conditions through a set of demonstration projects being conducted with interstate pipeline operators. Through the Demonstration Program, OPS will determine whether a risk management approach, properly implemented and monitored through a formal risk management regulatory framework, achieves:

(1) Superior safety and environmental protection; and

(2) Increased efficiency and service reliability of pipeline operations.

In June, 1997, Mobil submitted a Letter of Intent to OPS, asking to be considered as a Demonstration Program candidate. Using the consultative process described in Appendix A of the Requests for Application for the Pipeline Risk Management Demonstration Program (62 FR 14719), published on March 27, 1997, OPS is satisfied that Mobil's proposal will provide superior safety and environmental protection, and is prepared to finalize the agreement with Mobil on the provisions for the demonstration project.

D. Alternatives Considered

OPS has considered three alternatives: approval of the Mobil risk management demonstration project as proposed in Mobil's application; denial of the Mobil demonstration project; or approval of the project with certain modifications to Mobil's application.

OPS's preferred alternative is to approve the Mobil demonstration project. OPS is satisfied that the proposal protects the Patoka facility and surrounding environment. The risk assessment findings disclosed from Mobil's hazard and risk analyses already exceed the information that would have been available to OPS through the current regulatory process. As a result of the assessments, Mobil is considering potential corrective actions for various systems at the facility, including piping, pumps, communications, fire water system, utility/support systems, and cast iron valves. Because Mobil will continue to perform the activities currently required by the regulations, the set of proposed risk control activities will go beyond the current regulatory requirements to provide a higher level of protection than exists today. OPS and Mobil will monitor and, if necessary, improve the effectiveness of the risk control activities throughout the demonstration period.

Denial of the project would result in OPS's considerable loss of valuable information concerning the sources of risks at Patoka and other similar breakout tank facilities and the most effective means of managing these risks. Denial would also significantly diminish OPS's ability to evaluate the effectiveness of an institutionalized, integrated, and comprehensive risk management program in producing superior performance, and would hinder OPS's ability to satisfy the objectives of the Risk management Demonstration Program, and the requirements of the previously-mentioned Presidential Directive.

All of the issues raised by OPS, state regulators, stakeholders, and the public about Mobil's proposed project have been discussed within the consultative process, resolved to OPS's satisfaction, and reflected in Mobil's application. Therefore, OPS does not believe that modifications to Mobil's application are required.

E. Affected Environment and Environmental Consequences

The Patoka facility is located within the city limits of Vernon, Illinois, a town with a population of about 150. The area around the facility is low population density. The facility contains 22 vertical aboveground crude storage tanks, plant transfer piping, transfer pumps, crude oil blenders, offices, a maintenance building, miscellaneous auxiliary pipeline station equipment, and the station manager's personal residence. Patoka is a self-contained facility, with no public roads traversing the property.

The North Fork Creek, which runs along the south end of the Patoka facility, is a water supply for the city of Patoka. Mobil protects the creek by maintaining a second physical barrier surrounding each tank that is capable of holding more than the entire contents of the tank. Mobil has provided additional precautionary barriers to releases of product along the south end of its Patoka facility.

The facility is used as a common carrier crude pipeline handling facility. Products handled at the facility include crudes of varying sulphur content from the U.S. Gulf Coast and Canada, and petroleum condensate. The products include both ''sour'' crude (oil with a total sulphur content above one percent), and ''sweet'' crude (oil with little or no sulphur impurities). If a tank leak or rupture were to occur, the crude product could possibly spill into the immediate surrounding area within the facility, and in the presence of an ignition source, could ignite releasing fumes into the air. The likelihood of such spills and the levels of associated environmental consequences are already very low, as evidenced by both Patoka-specific and industry-wide operating history. The performance of the risk demonstration project will result in additional risk control activities over those currently required, reducing even further the likelihood of events that could impact the environment and the potential levels of those impacts.

In considering the merits of Mobil's proposal, OPS undertook a comprehensive review of the company's safety and compliance record for the demonstration project location, as well as Mobil's entire East of the Rockies (EOR) system. Mobil, like all operating companies, has experienced incidents at its facilities within and outside the United States. In the last five years, the only incident at Patoka of sufficient impact that required reporting to OPS occurred on March 7, 1995. A roof drain hose failed due to ice formation during sub-zero temperatures. This event resulted in no injuries and the company reported that 196 of the 200 barrels spilled were recovered.

Considering the frequency, causes, and consequences of these events, together with Mobil's response to these events, OPS has concluded that Mobil has demonstrated the corporate commitment to safety and environmental protection required of demonstration program candidates.

Mobil has also demonstrated a strong working relationship with emergency response personnel from federal and state agencies. Mobil recently participated in a successful emergency drill with representatives from OPS, the Environmental Protection Agency (EPA), and the Coast Guard. Local and state participants from Illinois and Missouri played active roles in this exercise.

F. Environmental Justice Considerations

In accordance with Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations), OPS has considered the effects of the demonstration project on minority and low-income populations. As explained above, OPS believes this project will provide superior safety and environmental protection at the Patoka facility. The risk control activities will provide greater protection than compliance with existing regulations. The Patoka facility is located within the city limits of Vernon, Illinois, population about 150. Residents of Vernon will be afforded greater protection than they presently have, regardless of the residents' income level or minority status. Therefore, the proposed project does not have any disproportionately high or adverse health or environmental effects on any minority or low-income populations near the demonstration facility.

G. Information Made Available to States, Local Governments, and Individuals

OPS has made the following documents publicly available, and incorporates them by reference into this environmental assessment:

(1) ''Demonstration Project Prospectus: Mobil Pipe Line Corporation'', June 1998, available by contacting Elizabeth M. Callsen at 202–366–4572. Includes a map showing the location of the demonstration project site. Purpose is to reach the public, local officials, and other stakeholders, and to solicit their input about the proposed project. Mailed to several hundred individuals, including Local Emergency Planning Committees (LEPC) and other local safety officials, Regional Response Teams (RRT) representing other federal agencies, state pipeline safety officials, conference attendees, and members of public interest groups.

(2) ''Mobil Pipe Line Company—Application for DOT–OPS Risk Management Demonstration Program'', available in Docket No. RSPA–98–3891 at the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–5046.

(3) ''OPS Project Review Team Evaluation of the Mobil Demonstration Project''.

(4) ''Notice of Intent to Approve Project'', published concurrently with this Environmental Assessment.

OPS has previously provided information to the public about the Mobil project, and has requested public comment, using many different sources. OPS aired four electronic broadcasts (June 5, 1997; September 17, 1997; and December 4, 1997; and March 26, 1998.) reporting on demonstration project proposals (the last three of which provided specific information on Mobil's proposal). An earlier **Federal Register** notice (62 FR 53052; October 10, 1997) informed the public that Mobil was interested in participating in the Demonstration Program, provided general information about technical issues and risk control alternatives to be explored, and identified the geographic areas the demonstration project would traverse.

Since August, 1997 OPS has used an Internet-accessible data system called the Pipeline Risk Management Information System (PRIMIS) at http://www.cycla.com/opsdemo to collect, update, and exchange information about all demonstration candidates, including Mobil.

At a November 19, 1997, public meeting OPS hosted in Houston, TX, Mobil officials presented a summary of the proposed demonstration project and answered questions from meeting attendees. (Portions of this meeting were broadcast on December 4, 1997.) OPS featured members of the Patoka community on a satellite/Internet nationwide broadcast which aired March 26, 1998. The school superintendent, fire chief, and mayor were among the citizens who remarked on community relations, training programs, exercises, spill drills, and other interactions between the company and citizens. In addition to viewers of the live broadcast at sites throughout the nation, the Internet broadcast received over 4300 hits. This broadcast is available on demand via the OPS website ops.dot.gov/tmvid.htm. So far, the public has not raised any issues or concerns related to the Mobil proposal.

H. Listing of the Agencies and Persons Consulted, Including Any Consultants

Persons/Agencies Directly Involved in Project Evaluation

Stacey Gerard, OPS/U.S. Department of Transportation
Tom Fortner, OPS/U.S. Department of Transportation
Ivan Huntoon, OPS/U.S. Department of Transportation
Donald Moore, OPS/U.S. Department of Transportation
Linda Daugherty, OPS/U.S. Department of Transportation
Bruce Hansen, OPS/U.S. Department of Transportation
Elizabeth Callsen, OPS/U.S. Department of Transportation
Steve Smock, Illinois Commerce Commission
Mary McDaniel, Railroad Commission of Texas

Jim vonHerrmann, Cycla Corporation (consultant)
Andrew McClymont, Cycla Corporation (consultant)

Persons/Agencies Receiving Briefings/Project Prospectus/Requests for Comment

Regional Response Team (RRT), Region 5, representing the Environmental Protection Agency; the Coast Guard; the U.S. Departments of Interior, Commerce, Justice, Transportation, Agriculture, Defense, State, Energy, Labor; Health and Human Services; the Nuclear Regulatory Commission; the General Services Administration; and the Federal Emergency Management Agency (RRT Co-Chairs: Richard Karl, EPA and Captain Gregory Cope, Coast Guard).

I. Conclusion

Based on the above-described analysis of the proposed demonstration project, OPS has determined that there are no significant impacts associated with this action.

[FR Doc. 98–17492 Filed 6–30–98; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT.

[Docket No. RSPA–98–3892; Notice 13]

Pipeline Safety: Intent To Approve Project and Environmental Assessment for the Phillips Pipe Line Company Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice of Intent to Approve Project and Environmental Assessment.

SUMMARY: As part of its Congressional mandate to conduct a Risk Management Demonstration Program, the Office of Pipeline Safety (OPS) has been authorized to conduct demonstration projects with pipeline operators to determine how risk management might be used to complement and improve the existing Federal pipeline safety regulatory process. This is a notice that OPS intends to approve Phillips Pipe Line Company (Phillips) as a participant in the Pipeline Risk Management Demonstration Program. This also provides an environmental assessment of Phillips's demonstration project. Based on this environmental assessment, OPS has preliminarily concluded that this proposed project will not have significant environmental impacts.

This notice explains OPS's rationale for approving this project, and summarizes the demonstration project provisions (including affected locations, risk control and monitoring activities, and regulatory exemptions) that would go into effect once OPS issues an order approving Phillips as a Demonstration Program participant. OPS seeks public comment on the proposed demonstration project so that it may consider and address these comments before approving the project. The Phillips demonstration project is one of several projects OPS plans to approve and monitor in assessing risk management as a component of the Federal pipeline safety regulatory program.

ADDRESSES: OPS requests that comments to this notice or about this environmental assessment be submitted on or before July 31, 1998 so they can be considered before project approval. However, comments on this or any other demonstration project will be accepted in the Docket throughout the four year demonstration period. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number RSPA–98–3892. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Pipeline Safety (OPS) is the federal regulatory body overseeing pipeline safety. As a critical component of its federal mandate, OPS administers and enforces a broad range of regulations governing safety and environmental protection of pipelines. These regulations have contributed to a good pipeline industry safety record by assuring that risks associated with pipeline design, construction, operations, and maintenance are understood, managed, and reduced. Preserving and improving this safety record is OPS's top priority. On the basis of extensive research, and the experience of both government and industry, OPS believes that a risk management approach, properly implemented and monitored, offers opportunities to achieve:

(1) Superior safety, environmental protection, and service reliability;

(2) Increased efficiency and reliability of pipeline operations; and

(3) Improved communication and dialogue among industry, the government, and other stakeholders.

A key benefit of this approach is the opportunity for greater levels of public participation.

As authorized by Congress, OPS is conducting a structured Demonstration Program to evaluate the use of a comprehensive risk management approach in the operations and regulation of interstate pipeline facilities. This evaluation will be performed under strictly controlled conditions through a set of Demonstration Projects to be conducted with interstate pipeline operators. A Presidential Directive to the Secretary of Transportation (October 16, 1996) stated that in implementing the Pipeline Risk Management Demonstration Program: ''The Secretary shall require each project to achieve superior levels of public safety and environmental protection when compared with regulatory requirements that otherwise would apply.'' Thus, the process to select operators for this Demonstration Program involves a comprehensive review to ensure that the proposed project will provide the superior safety and environmental protection required by this Directive. OPS may exempt a participating operator from particular regulations if the operator needs such flexibility in implementing a comprehensive risk management program; however, regulatory exemption is neither a goal nor requirement of the Demonstration Program. This document summarizes the key points of this review for Phillips's demonstration project, and evaluates the safety and environmental impacts of this proposed project.

2. OPS Evaluation of Phillips's Demonstration Project Proposal

Using the consultative process described in Appendix A of the Requests for Application for the Pipeline Risk Management Demonstration Program (62 FR 14719), published on March 27, 1997, OPS has reached agreement with Phillips Pipe Line Company on the provisions for a demonstration project to be conducted along Phillips's Sweeny-Pasadena system in Texas.

Company History and Record

Phillips Pipe Line Company is headquartered in Bartlesville,

Oklahoma, and employs over 580 people and operates and maintains approximately 7500 miles of pipelines in 9 states. Phillips transports approximately 750,000 barrels of crude oil, refined products, petrochemicals, and natural gas liquids each day.

Before entering into consultations with Phillips, OPS determined that Phillips was a good demonstration program candidate based on an examination of the company's safety and environmental compliance record, its accident history and its commitment to working with OPS to develop a project meeting the Demonstration Project goals.

In December 1992, during an excavation project, a contract equipment operator punctured a pipeline operated by Phillips in Aurora, Colorado. This accident resulted in a release of 1,665 barrels of natural gas liquids, injuring six people. Because of concerns raised by OPS over company procedures, Phillips developed a risk based approach to improve the safety of pipeline excavations and implemented an Excavation Risk Assessment process. Lessons learned from this incident as well as other company and industry incidents led Phillips to the development and implementation of a formal risk management program. This event was also a major driver behind the development of the Phillips Excavation Risk Assessment Process which is a focal point of its proposed demonstration project.

Consultative Evaluation

During the consultations, representatives from OPS headquarters and Southwest Region, pipeline safety officials from Texas, and risk management experts met with Phillips to discuss Phillips's overall risk management process. This included discussion of Phillips's risk assessment, risk analyses, and risk control processes and tools, its performance measures, and the philosophy and administration of risk management within the company. This also included a discussion of Phillips's excavation risk assessment process, including a review of the proposed demonstration project activities; population, terrain, and infrastructure along the affected pipelines; communications with outside stakeholders; and monitoring and auditing of results once the demonstration project is underway. The consultation process also included an environmental assessment which is an Appendix to this notice.

The consultation process focused on three major review criteria:

1. Whether Phillips's proposed risk management demonstration project is consistent with the Risk Management Program Standard and compatible with the Guiding Principles set forth in that Standard;
2. Whether Phillips's proposed risk management demonstration project is expected to produce superior safety, environmental protection, and reliability of service;
3. Whether Phillips's proposed risk management demonstration project includes a company work plan and a performance monitoring plan that will provide adequate assurance that superior safety, environmental protection, and service reliability are being achieved.

Once OPS and Phillips consider and address comments received on this notice and environmental assessment, OPS plans to issue an Order approving the Phillips demonstration project.

3. Statement of Project Goals

Phillips has been managing risk on its pipeline systems using a combination of personnel knowledge and experience, as well as Phillips and industry-wide operating data for many years. In 1995, Phillips Petroleum Company (Phillips's corporate parent) created the *Process for Safety and Environmental Excellence* (PSEE) to achieve a more consistent, formalized approach to ensuring the safe and environmentally responsible operation of its facilities. Within the framework of the PSEE, Phillips has implemented a formal risk management program. Formalizing Phillips's risk management program has involved developing more sophisticated tools to comprehensively identify and evaluate the most important risks associated with the design, construction, operation, and maintenance of Phillips's pipeline systems. Phillips is evaluating all of its pipelines using these tools, to identify the nature and location of the most significant risks.

During this demonstration project, Phillips will share information about its evolving risk management program with OPS. This will enable OPS to acquire an improved understanding of the methods and techniques the company is using to manage risk on its system, and obtain far more information about the company's management processes, pipeline operations, and potential safety and environmental risks than is normally observed during OPS inspections to ensure compliance with the regulations.

A key element of Phillips's risk management program is a risk-based approach to managing the risks associated with pipeline excavations. The Phillips Excavation Risk Assessment Process is a formal, ongoing process that has been in use system-wide since 1993 to identify and control the unique risks associated with each excavation on or near Phillips's pipelines. The process goes beyond the existing pipeline safety regulatory requirements for damage prevention.

For its risk management demonstration project, Phillips proposes to comprehensively evaluate the application and effectiveness of the Excavation Risk Assessment Process to all company and third-party excavations that occur on and across the pipeline segments included in the project. Phillips's demonstration project will involve:

—requirements that an excavation risk assessment be conducted prior to each excavation project (whether the excavation is performed by Phillips employees or outside parties proposing to dig near Phillips's lines);
—requirements that outside parties excavating along the Phillips right-of-way prepare work plans and obtain Phillips's approval prior to initiating excavation;
—increased work plan formality, level of detail, and management approval required for higher risk excavations, including where appropriate, coordination with local emergency response personnel;
—enhanced monitoring of excavation work;
—gathering of performance measurement data and developing a more quantitative assessment of the benefits of performing excavation risk assessments; and,
—enhanced communications with One-Call centers, excavators, and the public.

Phillips and OPS expect this project to demonstrate that risk management techniques can be successfully applied toward improving pipeline excavation safety.

4. Demonstration Project Pipeline Segments

Phillips has proposed a 60-mile segment of two pipelines for inclusion in its demonstration project.

Phillips's Sweeny-Pasadena products pipeline system consists of two interstate pipelines, 12″ and 18″, that deliver refined products (e.g., gasolines, distillates, and naphtha) from Phillips's Sweeny Refinery in Sweeny, Texas, to Phillips's Pasadena Terminal in Pasadena Texas. These products have varying properties and if released under certain conditions are flammable. They could also affect human health and the

environment if significant exposures occur.

The 12″ and 18″ pipelines have been in operation since 1959 and 1979, respectively. This system runs roughly Northeast from the Sweeny Refinery to the Pasadena Terminal, passing near the northern edge of Friendswood, Texas. The two lines parallel each other over the entire 60-mile distance. The lines run through sparsely populated areas for about the first 45 miles and through heavily populated areas for the last 15 miles. The lines cross the Brazos and San Bernard rivers, several major roadways and railroad lines, and pass underneath the Texas State Department of Corrections' Ramsey facility.

The 12″ line began service in 1956 and has a maximum operating pressure (MOP) of 1270 psi. It has had two leaks: one in 1992 and another in 1993. These leaks resulted in localized surface contamination near the line. Phillips quickly detected the leaks and stopped the release of product. The contaminated areas were satisfactorily remediated. There were no fatalities, injuries or adverse health effects to any member of the public or to any Phillips employees from these events. Both of these leaks were associated with material defects that developed because of the manufacturing process used to bend sections of the pipe. As a result of these events, Phillips conducted a comprehensive review of all pipe bends, that included an internal inspection for geometric defects. All piping bends with characteristics similar to those that had failed were replaced or heat treated to eliminate the condition that created the leaks. The 12″ line also has some history of coating problems. To resolve this problem, Phillips has placed additional rectifiers to provide enhanced cathodic protection.

The 18″ line was placed in service in 1979 and has a MOP of 680 psi. The 18″ line has not had any leaks.

5. Project Description

In 1995, the Phillips Petroleum Company (Phillips Corporate) created the *Process for Safety and Environmental Excellence* (PSEE) to achieve a more consistent, formalized approach to ensuring safe and environmentally responsible operation of its facilities. The PSEE is designed to manage environmental, safety and health risks in a manner that is integral to and not separate from the overall business process. The Phillips Corporate PSEE is a comprehensive business process applicable to every Phillips Corporate business unit (e.g., Phillips Pipe Line Company). Within this framework, each business unit is required to implement a formal risk management program.

As part of formalizing its risk management program for pipelines, Phillips has identified and uses a variety of tools to identify and manage pipeline risks. These include: hazards analysis, environmental impact reviews, internal (pipeline) inspection tools, incident investigations, safety, health and environmental audits, contractor assessments, design reviews and others. To support a more integrated evaluation of the potential risks represented by its pipelines, the company also developed the Phillips Pipeline Risk Assessment System (PRAS). PRAS is a computerized indexing model that predicts the relative risk different pipe segments represent based on numerous factors that influence the likelihood and consequences of pipeline failure. The model synthesizes data and information on pipe design, operation, maintenance, pipe condition, population and activity near the line, and external environmental conditions. PRAS has been in use since 1995 and has been applied to all of Phillips's regulated pipeline systems (approximately 5500 miles of pipe). During the course of the demonstration project, Phillips will be enhancing PRAS, and evaluating improved approaches to integrate the PRAS results with the output from the other tools noted previously to comprehensively and consistently assess risks across its pipeline.

During this demonstration project, Phillips will share information about its evolving risk management program with OPS.

This will enable OPS to improve its understanding of the methods and techniques the company is using to manage risk on its system, and obtain far more information about the company's management processes, pipeline operations, and potential safety and environmental risks than is normally observed during OPS regulatory compliance inspections.

The primary focus of Phillips's proposed demonstration project is to reduce pipeline risks resulting from excavations on or near Phillips's pipelines. Phillips hopes to demonstrate superior risk control and risk reduction mechanisms by applying its Excavation Risk Assessment Process. This process includes specific procedures relative to pipeline excavations and requires that an excavation site inspection and risk assessment be conducted prior to each excavation project. A risk assessment matrix is used to assess the potential risks associated with each excavation project. This matrix examines various risk factors for each excavation, including nearby population density, the presence of roads and railways, the existence of other utilities in the vicinity of the pipeline, the type of excavation equipment being used, and the properties of the product in the pipeline.

Phillips uses a graded approach based on combinations of risk factors to evaluate the level of Phillips's project review and approvals required for the excavation plan.

Phillips plans to communicate the details, progress, and results of the demonstration project, both externally and internally. Internally, Phillips will implement a formal communication program for company personnel involved with the demonstration project. Phillips will also implement excavation risk assessment refresher training prior to the start of the project, that will include the demonstration project communication plans and performance measures to be monitored and tracked during the project.

Externally, Phillips will contact the affected local emergency planning committees (LEPCs) at the beginning of the demonstration project to communicate the details of the project and to identify how Phillips will communicate progress and results during the project. Phillips will also contact city and county planning committees for the towns that the demonstration segments cross to communicate Phillips's excavation requirements. Phillips will conduct surveys regarding the effectiveness and benefits of its excavation risk management process. Phillips also plans to seek input from contractors and developers involved during the demonstration project to help determine the cost effectiveness for the level of safety achieved. They plan to communicate throughout the project with OPS, the Texas Railroad Commission, city and county planning committees, affected LEPCs, and contractors and developers.

Phillips's intended approach to performance monitoring of the project will include formal data collection and performance measures related to excavations along the demonstration segments. Phillips has proposed an initial set of performance metrics for the project and has an excavation risk assessment data collection worksheet to generate data and information relative to these metrics. Phillips's proposed performance metrics include:

- total number of one-call requests
- total number of excavation projects broken down by
  - —Phillips's excavation projects (planned and unplanned),

—third party excavations planned, and
—other, unplanned excavation activities.
- initial and final risk ranking of each excavation that required a formal risk assessment
- level of approval obtained to complete the excavation
- number and type of risk control activities implemented
- number of excavations completed, changed, or terminated
- categorization and characterization of the number of excavations by
  —successful excavation (i.e., no damage)
  —damage incurred,
  —damage resulting in a leak, and
  —effectiveness of emergency response plans to a leak.

6. Regulatory Perspective

Why Is OPS Considering This Project?

The OPS Project Review Team evaluated Phillips's proposed project according to review protocols and criteria. OPS has concluded the Phillips project will:

1. Provide superior safety and environmental protection for the pipeline segments proposed for the demonstration project; and

2. Offer a good opportunity to evaluate risk management as a component of the Federal pipeline safety regulatory program.

Phillips is not proposing any alternative to or requesting any regulatory exemption from existing pipeline safety regulations in this demonstration project. Rather, Phillips's proposed project goes beyond the regulations and is considered to provide superior protection.

Phillips's proposed project offers a good opportunity to evaluate risk management as a component of the Federal pipeline safety regulatory program. It also provides an opportunity to evaluate a risk-based pipeline damage prevention methodology that could have broad potential application. The damage prevention focus could also offer benefits to the current joint government/industry initiative on damage prevention education.

While the overall safety record for pipeline transportation is excellent, third party damage still presents a significant problem. Education on damage prevention is essential to reducing the incidence of third-party damage to underground facilities. OPS is currently sponsoring a joint government and industry Damage Prevention Quality Action Team to evaluate how to best utilize education resources to prevent pipeline damage. Phillips's proposed demonstration project is consistent with OPS's goals concerning pipeline damage prevention. The potential synergies between the Phillips project and the Damage Prevention Quality Action Team should enhance the benefits from both efforts.

OPS believes the Demonstration Program could benefit from Phillips's participation, given some of the distinguishing features of its proposed demonstration project, including:

—An emphasis on improving damage prevention and emergency response coordination;
—Plans for concentrated public outreach and risk communications efforts;
—A good illustration of how companies can use excavation risk management to improve safety without seeking to reduce costs incurred by existing regulations;
—Phillips's willingness to share information with OPS and state pipeline safety agencies on the specific risks associated with the demonstration line segments and the Company's overall risk management program and processes. This additional information will allow OPS to more effectively ensure safe operation, and help OPS understand how risk management might be employed to supplement the existing regulatory framework.

How Will OPS Oversee This Project?

The demonstration segments will be subject to routine OPS inspection to ensure compliance with the applicable Federal pipeline safety regulations. Additionally, the Demonstration Project will be monitored by a Project Review Team (PRT) consisting of OPS headquarters and regional staff, and state pipeline safety officials. The PRT is designed to implement a more comprehensive oversight process, which draws maximum technical experience and perspective from all affected OPS regional and headquarters offices as well as any affected state agencies that would not normally provide oversight on interstate transmission projects.

One of the PRT's primary functions will be to conduct periodic risk management audits. These audits will ensure Phillips's compliance with the specific terms and conditions of the OPS Order authorizing Phillips's demonstration project, and will be performed in addition to the normal OPS inspections. OPS is developing a detailed audit plan, tailored to the unique requirements of Phillips's demonstration project. This plan will describe the audit process (e.g., types of inspections, methods, and their frequency), as well as the specific requirements for reporting information and performance measure data to OPS.

Phillips is not requesting any regulatory exemptions, and OPS retains full authority to administer and enforce all regulations governing pipeline safety.

Information Provided to the Public

OPS has previously provided information to the public about the Phillips project, and has requested public comment, using many different sources. OPS aired several electronic ''town meetings'' enabling viewers of the two-way live broadcasts to pose questions and voice concerns about candidate companies (including Phillips). An earlier **Federal Register** notice (62 FR 53052; October 10, 1997) informed the public that Phillips was interested in participating in the Demonstration Program, provided general information about technical issues and risk control alternatives to be explored, and identified the geographic areas the demonstration project would traverse.

Since August, OPS has used an Internet-accessible data system called the Pipeline Risk Management Information System (PRIMIS) at http://www.cycla.com/opsdemo to collect, update, and exchange information about all demonstration candidates, including Phillips.

At a November 19, 1997, public meeting OPS hosted in Houston, TX, Phillips officials presented a summary of the proposed demonstration project and answered questions from meeting attendees. (Portions of this meeting were broadcast on December 4, 1997, and March 26, 1998.)

OPS has provided a prospectus, which includes a map of the demonstration segments, to State officials and community representatives who may be interested in reviewing project information, providing input, or monitoring the progress of the project. At this point, OPS has received no public comment on the Phillips's proposal.

This notice is the last public comment opportunity prior to approval of Phillips's demonstration project.

Issued in Washington, DC on June 25, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

Appendix: Environmental Assessment

A. Background and Purpose

A Presidential Directive to the Secretary of Transportation (October 16, 1996) stated that

in implementing the Pipeline Risk Management Demonstration Program: ''The Secretary shall require each project to achieve superior levels of public safety and environmental protection when compared with regulatory requirements that otherwise would apply.'' Thus, the process to select operators for this Demonstration Program involves a comprehensive review to ensure that the proposed project will provide the superior safety and environmental protection required by this Directive. This document summarizes the key points of this review for Phillips Pipe Line Company's (Phillips) proposed demonstration project and evaluates the safety and environmental impacts of this proposed project.

This document was prepared in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. Section 4332), the Council on Environmental Quality regulations (40 CFR Sections 1500–1508), and Department of Transportation Order 5610.1c, Procedures for Considering Environmental Impacts.

B. Description of Proposed Action

OPS intends to approve Phillips as a participant in the Pipeline Risk Management Demonstration Program. Phillips has proposed a 60-mile segment of two pipelines for inclusion in its demonstration project. Phillips's Sweeny—Pasadena products pipeline system consists of two interstate pipelines, 12″ and 18″, that deliver refined products (e.g., gasolines, distillates, and naphtha) from Phillips's Sweeny Refinery in Sweeny, Texas, to Phillips's Pasadena Terminal in Pasadena Texas. As the primary focus of its risk management demonstration project, Phillips proposes to comprehensively evaluate the application and effectiveness of its Excavation Risk Assessment Process to all company and third-party excavations that occur on and across the pipeline segments included in the project. OPS believes the Phillips demonstration project will provide superior safety and environmental protection by applying excavation risk control measures that exceed regulatory requirements.

In 1995, the Phillips Petroleum Company (Phillips Corporate) created the *Process for Safety and Environmental Excellence* (PSEE) to achieve a more consistent, formalized approach to ensuring safe and environmentally responsible operation of its facilities. The PSEE is designed to manage environmental, safety and health risks in a manner that is integral to and not separate from the overall business process. The Phillips Corporate PSEE is a comprehensive business process applicable to every Phillips Corporate business unit (e.g., Phillips Pipe Line Company). Within this framework, each business unit is required to implement a formal risk management program.

As part of formalizing its risk management program for pipelines, Phillips has identified and uses a variety of tools to identify and manage pipeline risks. These include: hazards analysis, environmental impact reviews, internal (pipeline) inspection tools, incident investigations, safety, health and environmental audits, contractor assessments, design reviews and others. To support a more integrated evaluation of the potential risks represented by its pipelines, the company also developed the Phillips Pipeline Risk Assessment System (PRAS). PRAS is a computerized indexing model that predicts the relative risk different pipe segments represent based on numerous factors that influence the likelihood and consequences of pipeline failure. The model synthesizes data and information on pipe design, operation, maintenance, pipe condition, population and activity near the line, and external environmental conditions. PRAS has been in use since 1995 and has been applied to all of Phillips's regulated pipeline systems (approximately 5500 miles of pipe). During the course of the demonstration project, Phillips will be enhancing PRAS and evaluating improved approaches to integrate the PRAS results with the output from the other tools noted previously to comprehensively and consistently assess risks across its pipeline.

During this demonstration project, Phillips will share information about its evolving risk management program with OPS. This will enable OPS to improve its understanding of the methods and techniques the company is using to manage risk on its system, and to obtain far more information about the company's management processes, pipeline operations, and potential safety and environmental risks than is normally observed during OPS regulatory compliance inspections.

A key element of Phillips's risk management program, and the primary focus of Phillips's proposed demonstration project, is a risk-based approach to managing the risks associated with pipeline excavations. The Phillips Excavation Risk Assessment Process is a formal, ongoing process that has been in use system-wide since 1993 to identify and control the unique risks associated with each excavation on or near Phillips's pipelines. The process goes beyond the existing pipeline safety regulatory requirements for damage prevention.

The Phillips Excavation Risk Assessment Process includes specific procedures relative to pipeline excavations and requires that an excavation site inspection and risk assessment be conducted prior to each excavation project. A risk assessment matrix is used to assess the potential risks associated with each excavation project. This matrix examines various risk factors for each excavation, including nearby population density, the presence of roads and railways, the existence of other utilities in the vicinity of the pipeline, the type of excavation equipment being used, and the properties of the product in the pipeline. Phillips uses a graded approach based on combinations of risk factors to evaluate the level of Phillips's project review and approvals required for the excavation plan.

For its risk management demonstration project, Phillips proposes to comprehensively evaluate the application and effectiveness of the Excavation Risk Assessment Process to all company and third-party excavations that occur on and across the pipeline segments included in the project. Phillips's demonstration project will involve:

—requirements that an excavation risk assessment be conducted prior to each excavation project (whether the excavation is performed by Phillips's employees or outside parties proposing to dig near Phillips's lines);
—requirements that outside parties excavating along the Phillips right-of-way prepare work plans and obtain Phillips's approval prior to initiating excavation;
—increased work plan formality, level of detail, and management approval required for higher risk excavations, including where appropriate, coordination with local emergency response personnel;
—enhanced monitoring of excavation work;
—gathering of performance measurement data and developing a more quantitative assessment of the benefits of performing excavation risk assessments; and,
—enhanced communications with One-Call centers, excavators, and the public.

Phillips plans to communicate the details, progress, and results of the demonstration project, both externally and internally. Internally, Phillips will implement a formal communication program for company personnel involved with the demonstration project. Phillips will also implement excavation risk assessment refresher training prior to the start of the project, that will include the demonstration project communication plans and performance measures to be monitored and tracked during the project.

Externally, Phillips will contact the affected local emergency planning committees (LEPCs) to communicate the details of the project and to identify how Phillips will communicate progress and results during the project. Phillips will also contact city and county planning committees for the towns that the demonstration segments cross to communicate Phillips's excavation requirements. Phillips will conduct surveys on the excavation risk management process effectiveness. Phillips plans to communicate throughout the project with OPS, the Texas Railroad Commission, city and county planning committees, affected LEPCs, and contractors and developers.

Phillips's intended approach to performance monitoring of the project will include formal data collection and performance measures related to excavations along the demonstration segments. Phillips has proposed an initial set of performance metrics for the project and has an excavation risk assessment data collection worksheet to generate data and information relative to these metrics. Phillips's proposed performance metrics include:

- total number of one-call requests
- total number of excavation projects broken down by
  —Phillips excavation projects (planned and unplanned),
  —third-party excavations planned, and
  —other, unplanned excavation activities.
- initial and final risk ranking of each excavation that required a formal risk assessment
- level of approval obtained to complete the excavation
- number and type of risk control activities implemented

- number of excavations completed, changed, or terminated
- categorization and characterization of the number of excavations by
  —successful excavation (i.e., no damage),
  —damage incurred,
  —damage resulting in a leak, and
  —effectiveness of emergency response plans to a leak.

Phillips and OPS expect this project to demonstrate that risk management techniques can be successfully applied toward improving pipeline excavation safety. During this demonstration project, Phillips will share information about its evolving risk management program with OPS. This will enable OPS to acquire an improved understanding of the methods and techniques the company is using to manage risk on its system, and obtain far more information about the company's management processes, pipeline operations, and potential safety and environmental risks than is normally observed during OPS regulatory compliance inspections.

OPS intends to approve Phillips as a participant in the Pipeline Risk Management Demonstration Program. OPS believes the Phillips demonstration project will provide superior safety by applying excavation risk control measures that exceed regulatory requirements.

Phillips is not requesting any regulatory exemptions, and OPS retains full authority to administer and enforce all regulations governing pipeline safety. The demonstration segments will be subject to routine OPS inspection to ensure compliance with the applicable Federal Pipeline Safety Regulations. Additionally, the Demonstration Project will be monitored by a Project Review Team (PRT) consisting of OPS headquarters and regional staff and state pipeline safety officials. The PRT is designed to implement a more comprehensive oversight process, which draws maximum technical experience and perspective from all affected OPS regional and headquarters offices as well as any affected state agencies that would not normally provide oversight on interstate transmission projects.

One of the PRT's primary functions will be to conduct periodic risk management audits. These audits will ensure Phillips's compliance with the specific terms and conditions of the OPS Order authorizing Phillips's demonstration project, and will be performed in addition to the normal OPS inspections. OPS is developing a detailed audit plan, tailored to the unique requirements of Phillips's demonstration project. This plan will describe the audit process (e.g., types of inspections, methods, and their frequency), as well as the specific requirements for reporting information and performance measure data to OPS.

C. Purpose and Need for Action

As authorized by Congress, OPS is conducting a structured Demonstration Program to evaluate the use of a comprehensive risk management approach in the operations and regulation of interstate pipeline facilities. This evaluation is being performed under strictly controlled conditions through a set of demonstration projects being conducted with interstate pipeline operators. Through the Demonstration Program, OPS will determine whether a risk management approach, properly implemented and monitored through a formal risk management regulatory framework, achieves:

(1) Superior safety and environmental protection; and

(2) Increased efficiency and service reliability of pipeline operations.

On July 21, 1997, Phillips Pipe Line Company submitted a Letter of Intent to OPS, asking to be considered as a Demonstration Program candidate. Using the consultative process described in Appendix A of the Requests for Application for the Pipeline Risk Management Demonstration Program (62 FR 14719), published on March 27, 1997, OPS is satisfied that Phillips's proposal will provide superior safety and environmental protection, and is prepared to finalize the agreement with Phillips on the provisions for the demonstration project.

D. Alternatives Considered

OPS has considered three alternatives: approval of the Phillips risk management demonstration project as proposed in Phillips's application; denial of the Phillips demonstration project; or approval of the project with certain modifications to Phillips's application.

OPS's preferred alternative is to approve the Phillips demonstration project as proposed in Phillips's application. OPS is satisfied that the proposal provides superior protection for the demonstration project segments and the surrounding environment. The Phillips Excavation Risk Assessment Process provides a higher level of protection than exists under the current regulatory requirements. Phillips is not requesting any regulatory exemptions and OPS retains full authority to administer and enforce all regulations governing pipeline safety. The demonstration segments will be subject to routine OPS inspection to ensure compliance with the applicable Federal Pipeline Safety Regulations. OPS and Phillips will monitor and, if necessary, improve the effectiveness of the risk control activities throughout the demonstration period.

Denial of the project would result in OPS's considerable loss of valuable information concerning the effectiveness of the proposed methodology for assessing and controlling excavation risks and reducing third-party damage. Denial would also significantly diminish OPS's ability to evaluate the effectiveness of an institutionalized, integrated, and comprehensive risk management program in producing superior performance, and would hinder OPS's ability to satisfy the objectives of the Risk Management Demonstration Program, and the requirements of the aforementioned Presidential Directive.

All of the issues raised by OPS, state pipeline safety officials, stakeholders, and the public about Phillips's proposed project have been discussed within the consultative process, resolved to OPS's satisfaction, and reflected in Phillips's application. Therefore, OPS does not believe that modifications to Phillips's application are required.

E. Affected Environment and Environmental Consequences

The 12″ and 18″ Sweeny—Pasadena pipelines proposed for this demonstration project transport refined products (e.g., gasolines, distillates, and naphtha) from Phillips's Sweeny Refinery to Phillips's Pasadena Terminal in Pasadena, Texas. These products are stable, flammable liquids. Product spills could result in the accumulation of highly flammable, heavier than air vapors in low areas. These vapors could also spread along the ground away from the spill site and could ignite. The resulting fire could create localized damage in the vicinity of the release. These products form carbon oxides and various hydrocarbons which are dispersed into the atmosphere when burned. These products will float on water (their solubility in water is negligible), and large spills have been known to result in kills of fish and other aquatic life.

However, it should be noted that the transport of these products is already protected by all existing, applicable pipeline safety regulations and safe industry practices, which have contributed to a good pipeline industry safety record. The proposed risk management measures are intended to improve upon this safety record.

The Sweeny-Pasadena system pipelines have been in operation since 1959 and 1979, respectively. This system runs roughly Northeast from the Sweeny Refinery to the Pasadena Terminal, passing near the northern edge of Friendswood, Texas. The lines parallel each other over the entire 60-mile distance to be included in the demonstration project. The lines run through sparsely populated areas for about the first 45 miles and through heavily populated areas for the last 15 miles. The lines cross the Brazos and San Bernard rivers, several major roadways and railroad lines, and pass underneath the Texas State Department of Corrections' Ramsey facility.

Both of these lines have a good leak history. The 12″ line began service in 1956 and has a maximum operating pressure (MOP) of 1270 psi. It has had two leaks: one in 1992 and another in 1993. These leaks resulted in localized surface contamination near the line. Phillips quickly detected the leaks and stopped the release of product. The contaminated areas were satisfactorily remediated. There were no fatalities, injuries or adverse health effects to any member of the public or to any Phillips employee from these events. Both of these leaks were associated with material defects that developed because of the manufacturing process used to bend sections of the pipe. As a result of these events, Phillips conducted a comprehensive review of all pipe bends, that included an internal inspection for geometric defects. All piping bends with characteristics similar to those that had failed were replaced or heat treated to eliminate the condition that created the leaks. The 12″ line also has some history of coating problems. To resolve this problem, Phillips has placed additional rectifiers to provide enhanced cathodic protection.

The 18″ line was placed in service in 1979 and has a MOP of 680 psi. The 18″ line has not had any leaks.

The OPS Project Review Team carefully reviewed Phillips's proposed excavation risk management activities and concluded that superior protection would be provided for the pipeline systems during the demonstration project. The Phillips Excavation Risk Assessment Process goes beyond the existing regulations in providing additional assurance of safety. OPS has concluded that the enhanced risk control activities will reduce the likelihood of pipeline accidents and leaks, especially those resulting from third party damage. Should a leak or rupture occur, the enhanced communication efforts should improve the responsiveness of company and local officials to an event, and diminish the consequences of any such leak or rupture. In summary, based on expected reductions in both the likelihood and consequences of leaks and ruptures, OPS has concluded that the proposed risk control activities will clearly reduce safety and environmental risks.

F. Environmental Justice Considerations

In accordance with Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations), OPS has considered the effects of the demonstration project on minority and low-income populations. As explained above, OPS believes this project will provide superior safety and environmental protection along the demonstration project lines. The pipeline segments proposed for the project are routed mostly through rural, sparsely populated areas, but include about 15 miles of pipeline which runs through industrial and developing residential areas. A mixture of income levels resides along the segments.

The risk control activities provide greater protection than mere compliance with existing regulations. Because the proposed risk management activities will be applied uniformly along the lines, residents and communities near the lines will be afforded greater protection, regardless of the residents' income level or minority status. Therefore, the proposed project does not have any disproportionately high or adverse health or environmental effects on any minority or low-income populations along the demonstration segments.

G. Information Made Available to States, Local Governments, (and) Individuals

OPS has recently (in January and February 1998) made the following documents publicly available, and incorporates them by reference into this environmental assessment:

(1) ''Demonstration Project Prospectus: Phillips Pipe Line Company'', June, 1998, available by contacting Elizabeth M. Callsen at 202–366–4572. Includes maps of the demonstration segments. Purpose is to reach the public, local officials, and other stakeholders, and to solicit their input about the proposed project. Mailed to over 500 individuals, including Local Emergency Planning Committees (LEPC) and other local safety officials, Regional Response Teams (RRT) representing other federal agencies, state pipeline safety officials, conference attendees, and members of public interest groups.

(2) ''Phillips Pipe Line Company—Application for DOT-OPS Risk Management Demonstration Program'', available in Docket No. RSPA–98–3982 at the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, (202)366–5046.

(3) ''OPS Project Review Team Evaluation of Phillips Demonstration Project''.

(4) Notice of Intent to approve project (published concurrently with this environmental assessment).

OPS has previously provided information to the public about the Phillips project, and has requested public comment, using many different sources. OPS aired several electronic broadcasts reporting on demonstration project proposals, including Phillips's proposal. An earlier **Federal Register** notice (62 FR 53052; October 10, 1997) informed the public that Phillips was interested in participating in the Demonstration Program, provided general information about technical issues and risk control alternatives to be explored, and identified the geographic areas the demonstration project would traverse.

Since August 1997, OPS has used an Internet-accessible data system called the Pipeline Risk Management Information System (PRIMIS) at http://www.cycla.com/opsdemo to collect, update, and exchange information about all demonstration project candidates, including Phillips.

At a November 19, 1997, public meeting OPS hosted in Houston, TX, Phillips officials presented a summary of the proposed demonstration project and answered questions from meeting attendees. (Portions of this meeting were broadcast on December 4, 1997, and on March 26, 1998. This broadcast is available on demand via the OPS website at http://ops.dot.gov/tmvid.htm.) No issues or concerns about Phillips's proposal have been raised.

H. Listing of the Agencies and Persons Consulted, Including Any Consultants

Persons/Agencies Directly Involved in Project Evaluation

Stacey Gerard, OPS/U.S. Department of Transportation
James C. Thomas (retired), OPS/U.S. Department of Transportation
Linda Daugherty, OPS/U.S. Department of Transportation
Carl Griffis, OPS/U.S. Department of Transportation
Anne Marie Joseph, OPS/U.S. Department of Transportation
Rod Seeley, OPS/U.S. Department of Transportation
Bruce Hansen, OPS/U.S. Department of Transportation
Elizabeth Callsen, OPS/U.S. Department of Transportation
Mary McDaniel, Gas Services Division, Railroad Commission of Texas
Jim vonHerrmann, Cycla Corporation (consultant)
Robert Brown, Cycla Corporation (consultant)
Herb Wilhite, Cycla Corporation (consultant)

Persons/Agencies Receiving Briefings/Project Prospectus/Requests for Comment

Regional Response Team (RRT), Region 6, representing the Environmental Protection Agency; the Coast Guard; the U.S. Departments of Interior, Commerce, Justice, Transportation, Agriculture, Defense, State, Energy, Labor; Health and Human Services; the Nuclear Regulatory Commission; the General Services Administration; and the Federal Emergency Management Agency (RRT Co-Chairs: Charles Gazda, EPA Region 6 and Cdr. Ed Stanton, Coast Guard 8th District).

I. Conclusion

Based on the above-described analysis of the proposed demonstration project, OPS has determined that there are no significant impacts associated with this action.

[FR Doc. 98–17493 Filed 6–30–98; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–97–2426; Notice 2]

Pipeline Safety: National Pipeline Mapping System

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public workshops.

SUMMARY: RSPA invites natural gas transmission and hazardous liquid pipeline operators, liquefied natural gas facility operations managers, mapping specialists, federal and state government agencies, and the public, to attend one of four public workshops on the national pipeline mapping system (NPMS). This digital mapping system, when complete, will show the location and selected attributes of the major natural gas transmission and hazardous liquid pipelines and liquefied natural gas facilities in the United States. At each of the workshops we will provide: An overview of the NPMS; details on the types of information OPS is requesting for the NPMS; facts about how we will use this information; technical specifications for submitting attribute data, geospatial data, and metadata; information about the national and state repository system; and advice on how to convert paper maps to digital data, should you want to convert.

DATES AND LOCATIONS: Four workshops will be held:

- July 14–15—Adam's Mark Hotels and Resorts, Houston, TX, 2900 Briarpark Drive at Westheimer, (800) 436–2326;
- September 1–2—Hotel Arlington Heights, Arlington Heights, IL, 75 W. Algonquin Road, (847) 364–7600;

- September 23–24—ANA Hotel, San Francisco, CA, 50 Third Street, (415) 974–6400;
- October 28–29—Washington Plaza Hotel, Washington DC, 10 Thomas Circle, (202) 842–1300.

All workshops will begin at 9:00 a.m. and end at 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Specifics on registration and hotel accommodation information are available on the OPS Homepage—http://ops.dot.gov or may be obtained by calling Janice Morgan, (202) 366–2392.

SUPPLEMENTARY INFORMATION: The Department of Transportation's Office of Pipeline Safety (OPS) is working with other federal and state agencies and the pipeline industry to create a national pipeline mapping system. The NPMS will be a digital mapping data base. This system, when complete, will show the location and selected attributes of the major natural gas transmission and hazardous liquid pipelines, and liquefied natural gas facilities in the United States. This would include information on interstate and intrastate natural gas transmission pipelines and hazardous liquid transmission lines. This would not include information on gas service lines, gas distribution lines, gathering lines, flow lines, or spur lines.

OPS will add additional data layers to the system, including layers to describe population densities, areas unusually sensitive to environmental damage, natural disaster probability and high-consequence areas, hydrography, and transportation networks. OPS will use the system to depict pipelines in relation to the public and the environment, and to work with other government agencies and industry during an incident.

The NPMS will provide federal and state governments and the pipeline industry with information on pipeline locations and their proximity to safety sensitive areas. For example, these include places where people live and work, community drinking water supplies, and national parks and historical areas.

The NPMS will consist of multiple state repositories and a single national repository. The repositories will follow one mapping data standard to digitize, convert, and process the data.

DOT strongly urges all natural gas transmission and hazardous liquid pipeline and liquefied natural gas facility operators to attend one of these meetings and to voluntarily provide mapping data for inclusion in the national pipeline mapping system. OPS will begin requesting pipeline operators to submit digital data early in 1999. OPS will accept paper data following collection of mapping data that has already been digitized.

Two Joint Government-Industry Pipeline Mapping Quality Action Teams (MQAT) have worked to create the national pipeline mapping system digital pipeline location and attribute layer. The teams are sponsored by OPS, the American Petroleum Institute, the Interstate Natural Gas Association of America, and the American Gas Association. Represented on the teams are OPS, the U.S. Geological Survey, the Department of Energy, the Federal Energy Regulatory Commission, the Department of Transportation's Bureau of Transportation Statistics, the states of Texas, Louisiana, California, New York, and Minnesota, and the natural gas and hazardous liquid pipeline industry.

The first team, MQAT I, analyzed various mapping alternatives and determined a cost-effective strategy for creating a reasonably accurate depiction (plus or minus 500 feet, for a corridor width of 1,000 feet) of transmission pipelines and liquefied natural gas facilities in the U.S. The findings of MQAT I are described in a report titled: ''Strategies for Creating a National Pipeline Mapping System'.

MQAT II implemented the strategies outlined by the first team. MQAT II developed the national pipeline mapping data standards that will be used to create the digital pipeline layer in the national pipeline mapping system. These include standards for electronic data submissions, paper map submissions, and metadata (data on the data). The team has also developed standards that will be used by the pipeline mapping repository receiving the pipeline information. Both standards were pilot tested by state agencies, industry, and others to test the exchange of data that met the standards. A copy of the standards can be viewed and downloaded from the OPS Internet web site. The Internet web site is http://ops.dot.gov. The standards can also be obtained by calling (202) 366-4561.

OPS has established a multi-phase approach to create the NPMS. This approach will allow industry and government to efficiently upgrade information in a manner that works with other business needs.

OPS strongly urges all natural gas transmission and hazardous liquid pipeline operators and liquefied natural gas facility operators to provide mapping data. With federal and state agencies and operators all contributing, we can save time and money. To be successful, we need your help. Please attend one of four public workshops to learn how you can participate.

Issued in Washington, DC on June 25, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–17477 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33612 (Sub-No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33612 [1] to permit the trackage rights to expire on July 31, 1998, in accordance with the agreement of the parties.[2]

DATES: This exemption is effective on July 31, 1998. Petitions to reopen must be filed by July 21, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33612 (Sub-No. 1) must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioners' representatives (1) Yolanda M. Grimes, Esq., The Burlington Northern and Santa Fe Railway Company, P. O. Box 961039, Fort Worth, TX 76161–0039, and (2) Joseph D. Anthofer, Esq., Union Pacific Railroad Company, 1416 Dodge Street, #830, Omaha, NE 68179.

[1] On June 4, 1998, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by UP to grant temporary overhead trackage rights to BNSF between Dallas, TX, in the vicinity of UP's milepost 214.6 (Dallas Subdivision) and Tower 55, Fort Worth, TX, in the vicinity of UP's milepost 245.5 (Dallas Subdivision), a distance of approximately 30.9 miles. *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 33612 (STB served June 22, 1998). The trackage rights operations under the exemption became effective on June 11, 1998, 7 days after the verified notice was filed, and were scheduled to be consummated on June 15, 1998.

[2] Trackage rights normally remain in effect unless discontinuance authority or approval of a new agreement is sought. *See Milford-Bennington Railroad Company, Inc.—Trackage Rights Exemption—Boston and Maine Corporation and Springfield Terminal Railway Company,* Finance Docket No. 32103 (ICC served Sept. 3, 1993).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 23, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–17394 Filed 6–30–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33615]

Genesee & Wyoming Inc.—Continuance in Control Exemption—Savannah Port Terminal Railroad, Inc. and Golden Isles Terminal Railroad, Inc.

Genesee and Wyoming Inc. (GWI), a noncarrier holding company, has filed a notice of exemption to continue in control of Savannah Port Terminal Railroad, Inc. (SAPT) and Golden Isles Terminal Railroad, Inc. (GITM), upon SAPT and GITM becoming Class III railroads.

The transaction was scheduled to be consummated on or shortly after June 8, 1998.

This transaction is related to STB Finance Docket No. 33613, *Savannah Port Terminal Railroad, Inc—Acquisition and Operation Exemption—Georgia Ports Authority and Savannah State Docks Railroad and STB Finance Docket No. 33614, Golden Isles Terminal Railroad, Inc.—Acquisition and Operation Exemption—Georgia Ports Authority and Colonel's Island Railroad,* wherein SAPT and GITM seek to acquire easements to operate over certain rail lines from GPA.

GWI directly controls one existing Class II rail carrier subsidiary: Buffalo & Pittsburgh Railroad, Inc., operating in New York and Pennsylvania. GWI directly controls 12 existing Class III rail carrier subsidiaries: Genesee & Wyoming Railroad Company, Inc., operating in New York; Dansville and Mount Morris Railroad Company, operating in New York; Rochester & Southern Railroad, Inc., operating in New York; Louisiana & Delta Railroad, Inc., operating in Louisiana; Bradford Industrial Rail, Inc., operating in Pennsylvania and New York; Allegheny & Eastern Railroad, Inc., operating in Pennsylvania; Willamette & Pacific Railroad, Inc., operating in Oregon; GWI Switching Services, operating in Texas; Illinois & Midland Railroad, Inc., operating in Illinois; Pittsburgh & Shawmut Railroad, Inc., operating in Pennsylvania; Portland & Western Railroad, Inc., operating in Oregon; and Corpus Christi Terminal Railroad, Inc., operating in Texas.

GWI indirectly controls 3 Class III rail carriers through its ownership of Rail Link, Inc.: Carolina Coastal Railway, Inc., operating in North Carolina; Commonwealth Railway, Inc., operating in Virginia; and Talleyrand Terminal Railroad, Inc., operating in Florida.

GWI states that: (1) The rail lines to be operated by SAPT and GITM do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect SAPT and GITM's lines with any railroads in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

As a condition to this exemption the continuance in control of SAPT and GITM are subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33615, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Board decision and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 24, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–17506 Filed 6–30–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33614]

Golden Isles Terminal Railroad, Inc.—Acquisition and Operation Exemption—Georgia Ports Authority and Colonel's Island Railroad

Golden Isles Terminal Railroad, Inc. (GITM), a noncarrier has filed a verified notice of exemption under 49 CFR 1150.31 to acquire the exclusive rail freight easement over and operate approximately 33 of miles rail line (consisting of approximately 12.6 miles of common use tracks and 20.4 miles of yard tracks, industrial leads, and related trackage over which the Board might not have jurisdiction) owned by Georgia Ports Authority (GPA).[1] The rail line involved in this acquisition is located in the Colonel's Island Bulk and Auto Processing Terminal near Brunswick, Glynn County Georgia. The line is currently operated by Colonel's Island Railroad (CIRR). Following GITM's acquisition of the line CIRR will permanently relinquish its rights to operate as a common carrier railroad over the line.

The transaction was expected to be consummated on or shortly after June 8, 1998.

This transaction is related to STB Finance Docket 33615, *Genesee & Wyoming Inc.—Continuance in Control Exemption—Savannah Port Terminal Railroad, Inc. and Golden Isled Terminal Railroad, Inc.,* wherein Genesee & Wyoming, Inc., has concurrently filed a verified notice of exemption to continue in control of GITM upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to 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. 33614, must be filed with the Surface Transportation Board, Office

[1] The rail lines are located within a terminal area and do not have designated mileposts. GITM certifies that its projected revenues will not exceed those that would qualify it as a Class III carrier.

of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Esquire, Gollatz & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 24, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–17508 Filed 6–30–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33613]

Savannah Port Terminal Railroad, Inc.—Acquisition and Operation Exemption—Georgia Ports Authority and Savannah State Docks Railroad

Savannah Port Terminal Railroad, Inc. (SAPT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire the exclusive easement over and operate approximately 23 miles of rail line (consisting of approximately 1 mile of common use tracks, and 22 miles of yard tracks, industrial leads, and other related trackage over which the Board might not have jurisdiction) owned by the Georgia Ports Authority (GPA).[1] The rail line involved in this acquisition transaction is located within the Garden City Terminal, Garden City, GA. The line is currently operated by Savannah State Docks Railroad (SSDRR). Following the acquisition transaction, SSDRR will permanently relinquish its right to operate as a common carrier railroad over the line.

The transaction was expected to be consummated on or shortly after June 8, 1998.

This transaction is related to STB Finance Docket No. 33615, *Genesee & Wyoming Inc.—Continuance in Control Exemption—Savannah Port Terminal Railroad, Inc. and Golden Isles Terminal Railroad, Inc.*, wherein Genesee & Wyoming Inc., has concurrently filed a verified notice of exemption to continue in control of SAPT upon its becoming a Class III rail carrier.

[1] The rail lines are located within a terminal area and do not have designated mileposts. SAPT certifies that its projected revenues will not exceed those that would qualify it as a Class III railroad.

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. 33613, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 24, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–17507 Filed 6–30–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–83 (Sub-No. 16X]

Maine Central Railroad Company—Abandonment Exemption—in Androscoggin County, ME

Maine Central Railroad Company (MeC) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon an approximately 18.97-mile line of its railroad on the Lewiston Industrial Track between Engineering Station 0+00 (approximately milepost 0.00) and Engineering Station 1001+81.6 (approximately milepost 18.97), in Androscoggin County, ME. The line traverses United States Postal Service Zip Codes 04011, 04086, 04210, 04240, 04250, 04251 and 04252.

MeC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 31, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 13, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 21, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John R. Nadolny, Maine Central Railroad Company, Law Department, Iron Horse Park, North Billerica, MA.

If the verified notice contains false or misleading information, the exemption is void ab initio.

MeC has filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 6, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), MeC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by MeC's filing of a notice of consummation by July 1, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 24, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–17505 Filed 6–30–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; Notice of Open Meeting of the Community Development Advisory Board

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the Community Development Advisory Board (the ''Advisory Board''), which provides advice to the Director of the Community Development Financial Institutions Fund (the ''Fund'').

DATES: The next meeting of the Community Development Advisory Board will be held on Wednesday, July 15, 1998 at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC, 20005, (202) 622–8662 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Community Development Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended, (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the Fund (who has been delegated the authority to administer the Fund) on the policies regarding the activities of the Fund. The Fund is a wholly owned corporation within the Department of the Treasury. The Advisory Board shall not advise the Fund on the granting or denial of any particular application. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and that regulatory impact analysis therefore is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The next meeting of the Advisory Board, all of which will be open to the public, will be held at the Treasury Executive Institute, located at 1255 22nd Street, NW., Suite 500, Washington, DC, on Wednesday, July 15, 1998 at 10:00 a.m. The room will accommodate 30 members of the public. Seats are available on a first-come, first-served basis. Participation in the discussions of the meeting will be limited to Advisory Board members and Department of the Treasury staff. Anyone who would like to have the Advisory Board consider a written statement must submit it to the Fund, at the address of the Fund specified above in the For Further Information Contact section, by 4:00 p.m., Friday, July 10, 1998.

The meeting will include a report from Director Lazar on the activities of the CDFI Fund since the last Advisory Board meeting, members will be briefed and solicited for input on the development of the CDFI Fund's Strategic Plan, a discussion and vote on the formation of subcommittees will be conducted, and members will be briefed and solicited for input on the creation of an Impact study to be conducted by the Fund.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: June 26, 1998.

Ellen Lazar,

Director, Community Development Financial Institutions Fund.

[FR Doc. 98–17595 Filed 6–30–98; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), intend to extend without revision a currently approved information collection, the Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks (FFIEC 004). At the end of the comment period, the comments and recommendations received will be analyzed to determine whether the FFIEC and the agencies should modify the information collection. The agencies will then submit the report to OMB for review and approval.

DATES: Comments must be submitted on or before August 31, 1998.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, Third Floor, SW, Washington, DC 20219; Attention: Paperwork Docket No. 1557–0070 [FAX number (202) 874–5274; Internet address: regs.comments@occ.treas.gov]. Comments will be available for inspection and photocopying at that address.

Board: Written comments should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Additional information may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Gates, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Mary M. McLaughlin, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to Extend for Three Years Without Revision the Following Currently Approved Collection of Information

Title: Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks.

Form Number: FFIEC 004.

Frequency of Response: Annually (for executive officers and principal shareholders), and on occasion (for national, state member and insured state nonmember banks).

Affected Public: Individuals or households, Businesses or other for-profit.

For OCC:

OMB Number: 1557–0070.

Estimated Number of Respondents: 33,550 (30,500 executive officers and principal shareholders fulfilling recordkeeping burden, 3,050 national banks fulfilling recordkeeping and disclosure burden).

Estimated Average Hours per Response: 2.87 hours.

Estimated Total Annual Burden: 96,533.

For Board:

OMB Number: 7100–0034.

Estimated Number of Respondents: 4,955 (3,964 executive officers and principal shareholders fulfilling recordkeeping burden, 991 state member banks fulfilling recordkeeping and disclosure burden).

Estimated Average Hours per Response: 1.12 hours.

Estimated Total Annual Burden: 5,551.

For FDIC:

OMB Number: 3064–0023.

Estimated Number of Respondents: 30,170 (24,136 executive officers and principal shareholders fulfilling recordkeeping burden, 6,034 insured state nonmember banks fulfilling recordkeeping and disclosure burden).

Estimated Average Hours per Response: 1.8 hours.

Estimated Total Annual Burden: 54,306.

General Description of Report: This information collection is mandatory: 12 U.S.C. 1972(2)(G) (all); 12 U.S.C. 375(a)(6) and (10) , and 375(b)(10) (Board); 12 U.S.C. 1817(k) and 12 U.S.C. 93a (OCC); 12 CFR 349.3, 12 CFR 349.4, and 12 CFR 304.5(e) (FDIC).

Abstract: Executive officers and principal shareholders of insured banks must file with the bank the information contained in the FFIEC 004 report on their indebtedness and that of their related interests to correspondent banks. Banks must retain these reports or reports containing similar information and fulfill other recordkeeping requirements, such as furnishing annually a list of their correspondent banks to their executive officers and principal shareholders. Banks also have certain disclosure requirements for this information collection.

Request for Comment

Comments are invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: June 22, 1998.

Karen Solomon,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, June 25, 1998.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 11th day of June, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–17452 Filed 6–30–98; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptance on Federal Bonds: Name Change—Allegheny Mutual Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 18 to the Treasury Department Circular 570; 1997 Revision, published July 1, 1997, at 62 FR 35548.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 875–6905.

SUPPLEMENTARY INFORMATION: Allegheny Mutual Casualty Company, a Pennsylvania corporation, has formally changed its name to Allegheny Casualty Company, effective January 1, 1998. The Company was listed as an acceptable surety on Federal bonds at 62 FR 35549, July 1, 1997.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 of Title 31 of the United States Code, to Allegheny Casualty Company, Meadville, Pennsylvania. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $1,023,000 established for the Company as of July 1, 1997, remains unchanged until June 30, 1998.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1997 Revision, at page 35549 to reflect this change.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.htm1) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the circular from GPO, use the following stock number: 048000–00509–8.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: June 19, 1998.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 98–17338 Filed 6–30–98; 8:45 am]

BILLING CODE 4810–55–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Customer Survey—Consumer Complaints.

DATES: Written comments should be received on or before August 31, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0086. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mary Gottlieb, Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7135.

SUPPLEMENTARY INFORMATION:

Title: Customer Survey—Consumer Complaints.

OMB Number: 1550–0086.

Form Number: OTS Form 1604.

Abstract: This information collection will be used to obtain feedback from consumers who have filed a complaint against a thrift. This survey is part of OTS' efforts under the National Performance Review.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 5 minutes average.

Estimated Total Annual Burden Hours: 83 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 23, 1998.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–17420 Filed 6–30–98; 8:45 am]

BILLING CODE 6720–01–P 3

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Ongoing Survey for Interpretive Opinions.

DATES: Written comments should be received on or before August 31, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0085. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mary Gottlieb, Chief Counsel's Office, Regulations & Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7135.

SUPPLEMENTARY INFORMATION:

Title: Ongoing Customer Survey for Interpretive Opinions.

OMB Number: 1550–0085.

Form Number: OTS Form 1602.

Abstract: This information collection is needed to obtain feedback on the quality or opinions produced by the Office of Thrift Supervision in order to meet the goals of the National Performance Review with respect to improving customer service on a long-term basis.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 35.

Estimated Time Per Respondent: .25 average hours.

Estimated Total Annual Burden Hours: 8.75 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 23, 1998.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–17421 Filed 6–30–98; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

AGENCY: United States Information Agency.

Republican FR 98–160400 Published @ Page 33123 in the **Federal Register** of June 17, 1998 is republished in its entirety.

This notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the fragment of the Dead Scroll, Psalms Tehillim, to be included in the exhibit ''A Living Memorial to the Holocaust'' at the Museum of Jewish Heritage in New York, imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of this object for ''A Living Memorial to the Holocaust'' at the Museum of Jewish Heritage in New York beginning in July 1998 is in the national interest. The action of the United States in this matter and the immunity based on the application of the provisions of the law involved does not imply any view of the United States concerning the ownership of this exhibition object. Further, it is not based upon and does not represent any change in the position of the United States regarding the status of Jerusalem or the territories occupied by Israel since 1967. *See* letter of September 22, 1978, of President Jimmy Carter, attached to the Camp David Accords, *reprinted in* 78 *Dept of State Bulletin* 11 (October 1978); Statement of September 1, 1982 of President Ronald Reagan, *reprinted* 82 *Dept of State Bulletin* 23, (September 1982).

Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: A copy of this list may be obtained by contacting Ms. Jacqueline Caldwell, Assistant General Counsel, at (202) 619–6982. The address is, U.S. Information Agency, 301—4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: June 25, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–17530 Filed 6–30–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985. 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985).

ACTION: I hereby determine that the objects to be included in the exhibit, ''Saints and Sinners: Caravaggio's Italy'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit object at McMullen Museum of Art, Boston College, Chestnut Hill, MA from on or about January 26, 1999

through May 24, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Paul Manning, Assistant General Counsel, Office of the General Counsel, 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Dated: June 25, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–17529 Filed 6–30–98; 8:45 am]

BILLING CODE 8230–01–M

federal register

Wednesday
July 1, 1998

Part II

Department of Defense

Department of the Army, Corps of Engineers

Proposal To Issue and Modify Nationwide Permits; Notice

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Proposal To Issue and Modify Nationwide Permits

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

ACTION: Notice of intent and request for comments.

SUMMARY: To improve protection of the environment the Army Corps of Engineers is proposing changes to its Nationwide General Permit Program. On December 13, 1996, the Corps announced that it would phase out nationwide permit 26 (NWP 26) which covered certain activities in isolated waters and waters above the ''headwaters'' point on streams. Specifically, the Corps is proposing to issue 6 new nationwide permits (NWPs) and modify 6 existing NWPs to become effective when NWP 26 expires. In addition, the Corps is proposing to add one NWP condition and modify 6 existing NWP conditions, which will apply to all existing NWPs as well as the new and modified NWPs proposed in this notice. These NWPs are activity-specific, and most are restricted to discharges of dredged or fill material into non-tidal waters of the United States. In addition to improving protection of our aquatic resources, a principal objective is to ensure that those activities with truly minimal impacts are authorized in an efficient manner by a general permit. In this regard, we believe that these new and modified NWPs will authorize those activities with minimal impacts that are currently authorized by NWP 26. They will also authorize like activities with minimal impacts that occur below the headwaters. These NWPs will allow the Corps to improve overall environmental protection by allowing the Corps to prioritize its work in non-tidal waters based on the quality of impacted aquatic systems and the specific impacts of a proposed project. Although NWP 26 was originally scheduled to expire on December 13, 1998, the Corps is proposing to change the expiration date to March 28, 1999, to ensure that the Corps has adequate time to effectively involve the other agencies and the public in a new regional conditioning process. When the Corps first established the December 13, 1998, expiration date for NWP 26, we did not contemplate the extensive process needed to develop sound regional conditions. This extension is necessary since a lapse between the expiration of NWP 26 and the effective date of the replacement NWPs is unacceptable and unnecessary.

The Corps is also proposing to modify its ''single family home'' NWP (NWP 29) to change the acreage limit to ¼ acre, as discussed at the end of the preamble to this notice. In the interim, the Corps is suspending NWP 29 for single family housing activities that result in the loss of greater than ¼ acre of non-tidal waters of the United States, including non-tidal wetlands. The Corps is also making available a revised environmental assessment for NWP 29.

The public is invited to provide comments on these proposals and is being given the opportunity to request a public hearing on these activity-specific NWPs.

DATES: Comments on the proposed new and modified NWPs and the proposed modification of NWP 29 must be received by August 31, 1998. Comments on the proposal to extend the expiration date of NWP 26 to March 28, 1999, must be received by July 31, 1998.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson or Mr. Sam Collinson, CECW–OR, at (202) 761–0199 or http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

SUPPLEMENTARY INFORMATION:

Background

The protection and restoration of the aquatic environment is an integral part of the Army Corps of Engineers mission. In its recent Strategic Plan, the Corps made it clear that this part of its mission was equal to its more traditional missions of navigation and flood damage reduction. Over the past 10 years the Corps has made remarkable progress in improving environmental protection through its Regulatory Program. An example is the substantial improvements in the Nationwide Permit program. Through each of the last two five-year reauthorization cycles, the Corps has improved the NWP program. This proposal today takes an additional important step as the Corps phases out NWP 26.

While some may not appreciate fully the import of today's proposal on improving environmental protection, one must only discuss this issue with those who have implemented the NWPs for the past 20 years to gain an accurate account of the substantial progress today's action reflects. This proposal is a reflection of the Corps unequivocal commitment to its environmental mission and to wetlands protection.

The Corps is also committed to reducing regulatory burdens where possible. Consistent with the President's 1993 Wetlands Plan, the Corps, along with other Federal agencies, has made the Regulatory Program more fair, more flexible, and more effective. This NWP proposal also reflects this commitment.

The Corps of Engineers is proposing new and modified NWPs that will authorize those activities with minimal adverse effects on the aquatic environment that are currently authorized by NWP 26. This will ensure the NWP program is based on types of activities and continues to authorize work that has no more than minimal adverse effects on the aquatic environment. The Corps believes that the overall protection of the aquatic environment will be increased by these new and modified NWPs when compared to the existing NWP program. The proposed NWPs will help the Corps achieve its goal of managing its workload based on impacts to the aquatic environment as a whole, not on impacts to any particular geographic type of waters, such as isolated waters or headwater streams. The proposed new and modified NWPs, along with the existing NWPs, will allow the Corps to manage its workload by efficiently authorizing activities with minimal adverse effects and focusing its limited resources on aquatic areas of higher value. Higher value waters, including wetlands, will receive additional protection through increased regional conditioning of NWPs, case-specific special conditions, and case-specific discretionary authority to require a standard individual permit where necessary. These measures will ensure that impacts to these waters authorized by NWPs are no more than minimal. The Corps has established permit thresholds that will allow authorization of most projects that result in no more than minimal adverse effects on the aquatic environment. At the same time, the Corps has established PCN limits to ensure that any project that may have more than minimal adverse effects on the aquatic environment will be reviewed. Moreover, since a minimal adverse effect is still an effect on the aquatic environment, we will also require compensatory mitigation, when appropriate, to ensure that the goal of no net loss is achieved in the NWP program and that the cumulative adverse effects of these activities on the aquatic environment are minimal. Moreover, the Corps believes that the proposed NWPs, along with regional conditioning and the ability to place special conditions on NWP authorizations on a case-by-case

basis, will authorize no more than minimal individual and cumulative adverse effects to waters of the United States. Regional conditions will be required by each district to further restrict the use of the NWPs in higher value aquatic systems.

In the June 17, 1996, issue of the **Federal Register**, the Corps proposed to reissue NWP 26 and requested comments on several options for modification of this NWP. In response to this notice, the Corps received more than 500 comments concerning NWP 26. Numerous commenters opposed reissuance of NWP 26. Some commenters acknowledged the necessity of NWP 26, but believed that the NWP must be modified to address potential cumulative adverse effects. Many commenters stated that NWP 26 has worked well and that the loss of NWP 26 would result in increased regulatory burdens on the public, less regulatory certainty, unacceptable workload increases for the Corps, increased processing times, project delays, and an overall lessening of the regulatory program's ability to protect waters of the United States. As a result of the Corps review, the Corps determined that NWP 26 should be replaced with activity-specific NWPs, but in the interim a substantially modified NWP 26 was reissued on December 13, 1996, for a period of two years. This phased approach was determined to be necessary to minimize disruption and confusion for the regulated public and improve environmental protection. For a complete discussion of the issues concerning the reissuance and modification of NWP 26, please refer to the December 13, 1996, issue of the **Federal Register** (61 FR 65874–65922).

The coordination process to develop the new and modified NWPs has taken longer than the Corps expected. Moreover, the Corps has established a very time intensive process to effectively engage other agencies and the public in developing regional conditions.

Due to the additional amount of time required to develop the proposed new and modified NWPs and regional conditions, the Corps is proposing to change the expiration date of NWP 26 to March 28, 1999. Extending the expiration date of NWP 26 will ensure fairness to the regulated public by continuing to provide an NWP for activities in headwaters and isolated waters that have minimal adverse environmental effects until the proposed activity-specific NWPs that will replace NWP 26 become effective. If NWP 26 were to expire on the originally scheduled date of December 13, 1998, then most project proponents would have to apply for authorization through the individual permit process, although some activities may be authorized by other NWPs or regional general permits. For many activities with minimal adverse environmental effects, this would result in unnecessary burdens on the regulated public without added environmental benefits.

Section 404(e) of the Clean Water Act, which provides the statutory authority for the issuance of general permits, states that general permits (including nationwide permits) can be issued for no more than five years. Therefore, NWP 26 can be in effect for a 5 year period. However, the Corps decided that NWP 26 should expire when replacement NWPs become effective. We established a schedule for developing replacement NWPs by December 13, 1998, and announced that NWP 26 would expire then. The revised schedule to develop the new and modified NWPs now indicates that they will become effective on March 28, 1999. Based on this schedule, we are proposing to extend the expiration date of NWP 26 to March 28, 1999. The public is invited to provide comments on the proposal to extend the expiration date of NWP 26 within 30 days of the date of this notice. After the 30 day comment period, the Corps will make a decision on the proposal to extend the expiration date of NWP 26, and publish the decision in the **Federal Register**.

The replacement of NWP 26 with activity-specific NWPs will help implement the President's Wetlands Plan, which was issued by the White House Office on Environmental Policy on August 24, 1993. A major goal of this plan is that Federal wetlands protection programs be fair, flexible, and effective. To achieve this goal, the Corps regulatory program must continue to provide effective protection of wetlands and other aquatic resources and avoid unnecessary impacts to private property, the regulated public, and the environment. These proposed NWPs will more clearly address individual and cumulative impacts to the aquatic environment, ensure that those impacts are minimal, address specific applicant group needs, and provide more predictability and consistency to the regulated public. Throughout the process of developing the new and modified NWPs, the Corps recognized the concerns of natural resource agencies and environmental groups for the potential level of adverse effects on the aquatic environment resulting from these NWPs and the regulated public's need for the certainty and flexibility in the NWP program.

The activity-specific NWPs proposed in this notice were developed based on information from several sources: (1) comments submitted in response to the December 13, 1996, **Federal Register** notice to issue, reissue, and modify the NWPs; (2) Corps internal recommendations; (3) data concerning the types of activities currently authorized by NWP 26; (4) discussions with other Federal agencies; and (5) discussions with both developmental and environmental stakeholders.

Since NWP 26 was modified and reissued, the Corps collected additional data on the types of activities authorized by NWP 26 to develop these new NWPs. From May 1, 1997, through December 31, 1997, 83% of the total activities authorized by NWP 26 fell into 10 categories. Residential development comprised approximately 24% of the activities authorized by NWP 26. Transportation activities accounted for 19% of the NWP 26 authorizations. Six percent to 8% of NWP 26 authorizations were for each the following activities: agricultural activities, retail developments, industrial developments, stormwater facilities, and impoundments. Institutional facilities, mining activities, and channel modification activities each comprised 2% to 5% of the NWP 26 authorizations during this time period.

In response to the December 13, 1996, **Federal Register** notice, several commenters recommended NWPs for activities that were specifically authorized by NWP 26. We also received comments that recommended modifications to existing NWPs to authorize additional activities. We considered all recommendations received and, where appropriate, developed a proposed new NWP or proposed modification of an existing NWP to authorize that activity. Some proposals involved activities that did not require a permit or were exempt from Section 404 or Section 10 permit requirements. Where we believed that it was not appropriate to develop an NWP for a particular recommended activity, our reasons are provided elsewhere in this notice.

In contrast to NWP 26, none of the proposed new NWPs and the proposed modifications of existing NWPs are restricted solely to activities in headwaters and isolated wetlands. However, most are limited to work in non-tidal waters of the United States, and do not authorize work in tidal waters (i.e., waters subject to the ebb and flow of the tide) or in non-tidal wetlands contiguous (i.e., connected by

surface waters) to tidal waters. Some of the proposed new and modified NWPs are applicable only in non-Section 10 waters and do not authorize work in tidal waters or in non-tidal navigable waters of the United States. The removal of the headwaters restriction will help improve consistency and reduce confusion by eliminating the need to determine where the median flow of a waterbody, on an annual basis, is less than 5 cubic feet per second. In this proposal, we have clarified that for all NWPs, the acreage of loss of waters of the United States, which is the threshold measurement of the gross impacts to existing waters for determining whether a project might qualify for an NWP, includes the filled area plus any waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Furthermore, in most cases compensatory mitigation will be required for these losses.

Many of the proposed new and modified NWPs have preconstruction notification (PCN) requirements, which allow the Corps to review proposed activities on a case-by-case basis to: (1) place special conditions on specific projects to ensure that the authorized impacts will have minimal individual and cumulative adverse effects on the aquatic system; or (2) assert discretionary authority to require a standard individual permit. These provisions will ensure that the impacts authorized by the NWPs will be minimal. The PCN requirements differ for each NWP. The PCN threshold is based on a level of effects on the existing aquatic ecosystem that requires review by the District Engineer to ensure that those effects are minimal. Each district will identify any areas of high value waters that require lower PCN levels to ensure minimal adverse effects on the aquatic environment. With the national and district-added PCN thresholds, any activity below these limits will have minimal adverse effects on the aquatic environment. Many of the proposed NWPs have PCN requirements for activities that result in the loss, by filling or excavation, of greater than 500 linear feet of stream bed. The term ''stream bed'' is defined, for the purpose of the proposed new NWPs, as a water of the United States with flowing water (i.e., perennial and intermittent streams). Ephemeral stream beds are not subject to this 500 linear foot PCN requirement. However, Corps districts may regionally condition certain NWPs to require notification for activities that adversely affect ephemeral streams. District engineers are responsible for determining if a particular stream bed is perennial, intermittent, or ephemeral, based on the definitions provided below. District engineers can assert discretionary authority and require an individual permit for those activities that they determine will have more than minimal individual or cumulative adverse effects on the aquatic environment. As with all NWPs, Corps districts will continue to require that applicants avoid and minimize impacts on-site.

Section 404(e) of the Clean Water Act requires that only activities with minimal adverse environmental effects, both individually and cumulatively, can be authorized by general permits. Activities with more than minimal adverse impacts are subject to the individual permit process and the associated alternatives analysis, individual public notice procedures, and other aspects of individual review that help ensure that potential adverse effects are fully avoided and minimized to the maximum extent practicable before an activity is authorized. On a national basis, the Corps prescribes terms and conditions for nationwide permits to ensure that the NWPs only authorize activities that have minimal individual and cumulative adverse effects on the aquatic environment. Furthermore, in certain situations to ensure that activities authorized by NWPs have minimal adverse effects, the Corps: (1) requires a specific review (i.e., a preconstruction notification) so that activity-specific conditions can be imposed where necessary; (2) adds regional conditions on a regional or geographic basis, to ensure that activities authorized by the NWPs have minimal adverse effects; or (3) exercises discretionary authority to require individual permits for those activities that would have more than minimal adverse effects on the aquatic environment.

District engineers will normally require compensatory mitigation to offset adverse environmental effects to the aquatic environment that result from activities authorized by these NWPs, thus ensuring no more than minimal cumulative adverse environmental effects and supporting the goal of no net loss of aquatic resource functions and values. Compensatory mitigation can be accomplished through individual mitigation projects, through mitigation banks and through in lieu fee programs. A focus of all mitigation for NWP impacts in and around flowing and other open waters will be to normally require vegetated buffers, including upland areas adjacent to open waters. These buffer areas are vital for protecting and enhancing water quality.

Compensatory mitigation is necessary to offset losses of functions and values of aquatic systems caused by permitted activities. In 1997, the Corps required 28,631 acres of compensatory mitigation for 15,989 acres of impacts authorized by standard permits (which includes individual permits and letters of permission). During this same time period, the Corps required 24,819 acres of compensatory mitigation for 21,409 acres of impacts authorized by general permits, including nationwide permits and regional general permits. Restoration, enhancement, and creation comprise the bulk of compensatory mitigation efforts. Less than 5% of this compensatory mitigation is accomplished through preservation of aquatic resources. In some Corps districts, such as Savannah District, preservation of aquatic habitats is used to augment restoration, enhancement, and creation efforts. In the Savannah District, permittees are typically required to provide restoration, enhancement, and creation at a 1:1 ratio of impacts to mitigation, and provide additional preservation of aquatic resources, to ensure that there is no net loss of functions and values as a result of authorized activities.

Permittees who received an NWP 26 authorization before NWP 26 expires will have up to 12 months to complete the authorized activity, provided they have commenced construction, or are under contract to commence construction, prior to the date NWP 26 expires (see 33 CFR 330.6(b)). This provision applies to all NWP authorizations unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5(c) or (d).

The existing NWPs, with the exception of NWP 26, will remain in effect until they expire on February 11, 2002, unless otherwise modified, reissued, or revoked. Some of the proposed NWPs can be used with existing NWPs to authorize projects with minimal individual or cumulative adverse effects on the aquatic environment. Any prohibitions or limitations regarding stacking of the proposed new or modified NWPs with existing NWPs or each other will be addressed in the proposed NWPs.

The Corps believes that substantial additional protection of the overall aquatic environment will result from modification of two NWP conditions. We are proposing to modify General Condition 9, previously entitled ''Water

Quality Certification'', to require that post-project conditions do not result in more than minimal degradation of downstream water quality. For certain NWPs, this General Condition will require the implementation of a water quality management plan to protect and enhance aquatic resources. The water quality management plan may consist of storm water management techniques and/or the establishment of vegetated buffer zones. In many cases, the Corps will be able to rely on State or local water quality plans. We are also proposing to modify former Section 404 Only Condition 6 by changing its title from ''Obstruction of High Flows'' to ''Management of Water Flows'' and modifying it to require that neither upstream nor downstream areas are more than minimally flooded or dewatered after the project is completed. This requirement will help ensure that post-construction effects on the aquatic environment and populated areas are further minimized. We are also modifying other conditions and consolidating the general and Section 404 only NWP conditions to a single list, as discussed below.

Ensuring the protection of threatened and endangered species is a high priority of the Department of the Army Regulatory Program, including the general permit program. Because of programmatic safeguards and individual project review, the Corps continues to believe the NWP program results in no effect on endangered species. Notwithstanding this position, we have requested formal programmatic consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) to ensure that the NWP program, including the proposed new and modified NWPs, has a formal process to develop any necessary additional procedures at the district level. This will ensure that the program will not jeopardize the continued existence of any Federally listed endangered species. The formal consultation will be initiated as soon as possible and completed by December 13, 1998.

In addition to the standard NWP condition for endangered species, the Corps has required regional conditions and activity-specific conditions to address specific endangered species. To further ensure compliance with the requirements of ESA, Corps districts have developed, and will continue to develop, local operating procedures (referred to as Standard Local Operating Procedures for Endangered Species, or SLOPES) to ensure that districts will continue to reach a project specific ''may affect'' determination when necessary, and thus consult with FWS and NMFS, where appropriate. Furthermore, programmatic formal consultation has been initiated on NWP 29. We expect this consultation will be completed this summer. Corps districts will develop additional regional conditions and SLOPES this summer for the new and modified NWPs, to ensure that we fully comply with the Endangered Species Act.

Overall, the Corps believes that the proposed changes to the NWP program will substantially enhance protection of the aquatic environment while allowing activities with minimal individual and cumulative adverse effects on the aquatic environment to proceed with a minimum of delay. For example, where we have proposed higher acreage limits for mitigated losses, such as NWP B for master planned development activities, the applicant must fully protect all remaining waters in the project area and offset all losses of aquatic functions and values within the community. In this way, the overall aquatic environment will be maintained, and in many cases enhanced, by planning for treatment of stormwater, establishing and/or maintaining buffers around all aquatic areas, and placing deed restrictions on all unimpacted aquatic environments and associated buffer areas. In addition, some of these NWPs will authorize all secondary activities associated with the primary activity, such as infrastructure and recreational amenities, with the impacts for a residential development. This will discourage piecemealing by encouraging applicants to present the total project.

General Issues

In addition to seeking comments on the proposed new and modified NWPs, the Corps is soliciting comments on the following general issues related to the proposed NWPs: the scope of the new NWPs, acreage limitations and PCN thresholds on the proposed NWPs, assessing cumulative impacts on a watershed basis, and regional conditioning of the NWPs. The Corps is also seeking comments on other issues related to the NWPs, such as maintenance of landfill surfaces, maintenance and filling of ditches adjacent to roads and railways, maintenance of water treatment facilities, the use of mitigation banks in the NWP program, and expansion of NWP 31, which are discussed below in the section entitled ''Other Suggested NWPs''.

NEPA Compliance

The Corps recognizes that there has been, and continues to be, substantial interest among the public regarding the potential environmental effects associated with the implementation of the Nationwide Permit program. With the last reissuance of the NWPs in December 1996, we reemphasized our commitment to improve data collection and monitoring efforts associated with the NWP program, and NWP 26 in particular. In many instances, these efforts have already provided critical information on the use of the NWPs, overall acreage impacts, affected resource types, the geographic location of the activities, and the type of mitigation provided. This information is critical in our efforts to make well-informed permitting and policy decisions regarding the continued role of the NWP program and to ensure that the program continues to authorize only those activities with minimal individual and cumulative effects.

We also recognize that this current process to develop replacement permits for NWP 26 provides an important opportunity to further expand the current tools available for evaluating and monitoring the environmental effects associated with this program. We are committed to ensuring and demonstrating that the NWP program as a whole, including the new NWPs proposed today, authorizes only those activities with minimal individual and cumulative environmental effects. Consistent with this commitment, the Corps will prepare a programmatic environmental impact statement (PEIS) for the entire NWP program. While a PEIS is not required for the reasons noted below, the PEIS will provide the Corps with a comprehensive mechanism to review the effects of the NWP program on the environment, with full participation of other Federal agencies, States, Tribes, and the public. The Corps will initiate the PEIS by mid-1999 and complete it by December 2000. The Corps plans to complete the PEIS prior to the next scheduled reissuance of the NWPs in December 2001.

The National Environmental Policy Act (NEPA) requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major Federal actions that have a significant impact on the quality of the human environment. Notwithstanding our commitment to complete a PEIS, we have determined that the NWP program does not constitute a major Federal action significantly affecting the human environment and therefore the preparation of an EIS is not required by NEPA. The basis for this determination is that the NWP program authorizes only those activities that have minimal adverse environmental effects on the

aquatic environment, both individually and cumulatively, which is a much lower threshold than the threshold for requiring an EIS. We have prepared a Finding of No Significant Impact (FONSI) for the NWP program. Copies of the FONSI are available at the office of the Chief of Engineers, at each District office, and on the Corps home page at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

Similar to our determination for the overall NWP program, we have made a preliminary determination that the proposed new and modified NWPs do not constitute a major Federal action significantly affecting the quality of the human environment, because the NWPs authorize only those activities that have minimal adverse effects on the aquatic environment, both individually and cumulatively. In compliance with NEPA, preliminary environmental documentation has been prepared for each proposed NWP and each proposed modification of an existing NWP. This documentation includes a preliminary environmental assessment (EA), a preliminary FONSI, and, where relevant, a preliminary Section 404(b)(1) Guidelines compliance review for each proposed new and modified NWP. Copies of these documents are available for inspection at the office of the Chief of Engineers, at each Corps district office, and on the Corps Home Page at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/. Based on these documents the Corps has provisionally determined that the proposed new and modified NWPs comply with the requirements for issuance under general permit authority.

Scope of the New NWPs

The applicable waters of the United States for the proposed and existing NWPs can be categorized in five ways: (1) all waters of the United States; (2) non-tidal waters; (3) non-tidal waters, excluding non-tidal wetlands contiguous to tidal waters; (4) non-Section 10 waters; and (5) non-Section 10 waters, excluding wetlands contiguous to Section 10 waters. The term ''all waters of the United States'' includes both Section 10 and Section 404 waters. ''Non-tidal waters'' are waters of the United States that are not subject to the ebb and flow of the tide (i.e., are located landward of the normal spring high tides), and may include non-tidal wetlands contiguous to tidal waters. ''Non-tidal waters, excluding non-tidal wetlands contiguous to tidal waters'' are limited to non-tidal waters and wetlands that are not connected by surface waters to tidal waters or are not part of a linear aquatic system with a defined channel to the otherwise contiguous wetland (see the proposed definitions of ''contiguous wetland'' and ''noncontiguous wetland'', below). Where non-tidal waters and wetlands are contiguous to tidal waters, there are no uplands or other non-jurisdictional areas separating those non-tidal waters from the tidal waters. ''Non-Section 10 waters'' are limited to waters of the United States, including wetlands, located above the ordinary high water mark of Section 10 waters. Wetlands located below the ordinary high water mark in Section 10 waters are Section 10 waters. ''Non-Section 10 waters, excluding wetlands contiguous to Section 10 waters'' are limited to waters and wetlands that are not connected by surface waters to Section 10 waters; there may be uplands or other non-jurisdictional areas separating those waters. Wetlands contiguous to Section 10 waters may be either tidal or non-tidal.

Many of the proposed new NWPs (e.g., NWPs A, B, D, and E) are applicable only to discharges of dredged or fill material into non-tidal waters of the United States, excluding wetlands that are contiguous to tidal waters. A definition of ''contiguous wetland'' has been proposed in the definition section of this notice. Proposed NWPs C and F are applicable only to non-Section 10 waters of the United States. For the proposed modification to NWP 12, the construction of substations and access roads is authorized only in non-Section 10 waters, but the construction of utility lines and foundations for overhead utility lines may be authorized in Section 10 waters. The proposed modifications to NWP 27 allow wetland and riparian restoration in non-tidal waters of the United States, while limiting stream enhancement projects to non-Section 10 waters. The proposed modification to NWP 7 may authorize work in navigable waters of the United States (i.e., Section 10 waters). Crushed and broken stone and hard rock/mineral mining activities authorized by proposed NWP E can occur only in non-tidal waters of the United States that are not contiguous to tidal waters. The activities authorized by the proposed modification to NWP 40 are limited to non-tidal waters, including activities in non-tidal wetlands contiguous to tidal waters.

Acreage Limitations and PCN Thresholds

The Corps is seeking comments on the acreage limitations and PCN thresholds for the proposed new NWPs and the proposed modifications to existing NWPs. The Corps will review and consider acreage limits that are smaller or greater than those proposed. If the Corps believes that an acreage limit substantially higher than proposed may be appropriate, then a new proposal with an opportunity to comment would be published in the **Federal Register**.

For the new NWPs, the acreage limitations range from 1 acre for NWP D to 10 acres for NWP B. NWP F is limited to the minimum necessary to reconfigure the drainage ditch. The upper limits for the proposed modifications to existing NWPs are highly variable. NWP 27 will continue to have no acreage limit, since it authorizes projects that restore or enhance the aquatic environment. The acreage limits for the other proposed modifications range from ⅓ acre for private roads under NWP 14 to 3 acres for NWP 40. The proposed modification to NWP 7 will not have an acreage limitation, but will restrict the work to the minimum necessary to restore the facility to its original configuration.

The PCN threshold for many of the proposed new NWPs and modifications to existing NWPs will be the loss of greater than ⅓ acre of waters of the United States. In addition, there are PCN requirements for impacts to open waters and streams for some of these NWPs. NWP A requires a PCN for any impacts to open waters below the ordinary high water mark. NWP B requires a PCN for all activities. NWPs C and D and the proposed modification of NWP 40 require a PCN if greater than 500 linear feet of stream bed is filled or excavated. NWP E and the proposed modification to NWP 7 will require notification for all activities. NWP F will require notification for any ditch reconfiguration that involves sidecasting excavated material into waters of the United States. The proposed modifications to NWP 3 will require notification for the removal of accumulated sediments and debris in the vicinity of existing structures and for restoration of upland areas damaged by storms, floods, or other discrete events that affect greater than ⅓ acre of waters of the United States. The repair, rehabilitation, or replacement of currently serviceable structures or fills will not require notification under the proposed modification of NWP 3.

Mitigation

A requirement of the NWPs is that project proponents must avoid and minimize impacts to waters of the United States at the project site to the maximum extent practicable. (See General Condition 20.) For those unavoidable impacts to waters of the United States, including wetlands,

compensatory mitigation may be required, either through regional conditioning or on a case-by-case basis. Compensatory mitigation will normally be required by district engineers for those projects which require notification (i.e., impacts to more than ⅓ acre of waters of the United States for most of the proposed NWPs). Compensatory mitigation will be required by Corps districts to offset the adverse environmental effects to the aquatic ecosystem of the proposed work to a level that ensures no more than minimal cumulative adverse environmental effects.

There are several ways that a permittee can provide compensatory mitigation for a project that is authorized by NWPs. The permittee can restore, create, enhance, or preserve wetlands or other aquatic habitats to replace the functions and values of the wetlands and other waters of the United States that are lost as a result of the project. In most situations, establishing or maintaining a vegetated buffer, including uplands adjacent to open waters, will be an important part of a mitigation plan. Another method of compensatory mitigation is mitigation banks. A mitigation bank is a site where wetlands or other aquatic resources are restored, created, enhanced, or preserved to provide compensatory mitigation in advance of the authorized impacts. The entity that developed the mitigation bank provides these aquatic resources in return for payment from the permittee. Federal guidance for the establishment, use, and operation of mitigation banks was published in the **Federal Register** on November 28, 1995 (60 FR 58605–58614). A third method of compensatory mitigation is in lieu fee programs, which may be used to offset losses of waters of the United States. In lieu fee programs are typically operated by States, counties, and private and public organizations who protect, restore, and enhance open space, including waters of the United States. Permittees may use in lieu fee programs that protect, enhance, or restore wetlands, riparian corridors, and open water areas, including upland buffers which protect water quality. The permittee pays a fee to the operator of the in lieu fee program in exchange for the protection, enhancement, and restoration of these areas. In lieu fee programs should be watershed based and focused in areas where restoring, enhancing, and preserving the aquatic system and associated uplands will provide the greatest overall protection of that particular watershed. Regardless of the method used to provide compensatory mitigation, district engineers have the discretionary authority to determine the type and quantity of compensatory mitigation that is appropriate to replace lost aquatic functions and values.

Cumulative Impacts

Cumulative adverse effects on the aquatic environment caused by activities authorized by NWPs, regional general permits, and individual permits must be monitored by the districts on a watershed basis. Assessment of cumulative impacts on a watershed basis is the only technically sound approach and must focus on essential aquatic functions and values. No determination of minimal individual and cumulative adverse effects can be made on a national basis, because the functions and values of aquatic resources vary considerably across the nation and cannot be monitored or assessed by Corps headquarters. Individual districts are better suited to assess cumulative impacts because they have a better understanding of the local conditions and processes used to evaluate whether cumulative impacts to the aquatic environment in a particular watershed will be more than minimal as a result of work authorized by the Corps. In some watersheds, a large acreage of loss of waters offset with appropriate compensatory mitigation could occur and result in no more than minimal cumulative adverse effects on that watershed. Similar wetland losses in other watersheds could exceed the minimal impact threshold, if the wetlands in that watershed were of high value, or if historic wetland losses in that watershed were extensive, making the remaining wetlands especially valuable due to the scarcity of that habitat type. Therefore, each district generally monitors the losses of waters of the United States in each watershed, as well as the gains through restoration, enhancement, creation, and preservation of aquatic resources, to determine whether the effects of these actions result in more than minimal cumulative adverse effects on the aquatic environment. Regional conditions can be used by districts to allow the continued use of these NWPs while making certain that the individual and cumulative adverse environmental effects to the aquatic ecosystem are not more than minimal. The Corps has established a process on a nationwide basis (regional conditioning), a requirement that each district compensate for impacts through mitigation, as well as nationwide PCN limits, all of which will ensure no more than minimal adverse effects will occur on a cumulative basis. The Corps will continue to work towards the goal of no net loss of functions and values of the Nation's aquatic resources.

Division engineers can revoke any of the proposed NWPs in aquatic environments of particularly high value or in specific geographic areas (e.g., watersheds), if they believe that use of particular NWPs in these areas will result in more than minimal individual and cumulative adverse environmental effects to the aquatic ecosystem. The proposed NWPs may be revoked where districts have implemented programmatic general permits (PGPs) for similar activities, as long as the PGP provides at least the level of protection of the aquatic environment that the Corps does through its NWP program.

Data Collection by Corps Districts

Corps districts use databases to collect information concerning permit applications, issued standard permits, issued general permit authorizations, denied permit applications, and enforcement activities. Most districts utilize the Regulatory Analysis and Management System (RAMS and RAMSII). The Corps has been continuously improving its data collection efforts, especially for the NWP Program. Districts have been collecting the following information for all permit actions, including NWP authorizations:

- The name of the permit applicant.
- The description and location of the work.
- The amount of requested impacts to non-tidal and/or tidal wetlands, in acres.
- The amount of authorized impacts to non-tidal and/or tidal wetlands, in acres.
- The amount of compensatory mitigation provided by the permittee, in acres of non-tidal and/or tidal wetlands restored, enhanced, created, or preserved.
- The amount of non-tidal and/or tidal wetlands impacted as a result of an unauthorized activity, in acres.
- The amount of non-tidal and/or tidal wetlands restored as a result of an enforcement action, in acres.

Since May 1, 1997, districts have been required to collect additional information on the environmental impacts of the NWPs. Wetland impacts are entered in the database as acres of wetlands permitted to be filled, excavated, drained, and flooded. Stream impacts are quantified in linear feet of stream bed that are permitted to be impacted by an activity that involves filling or excavation within a stream. The Corps is also collecting data on the

types of waters impacted (i.e., estuarine, lacustrine, marine, palustrine, or riverine), based on the Cowardin classification system. As resources permit, Corps districts may use the remainder of the Cowardin classification system to better define the types of aquatic habitats being impacted. The United States Geological Survey (U.S.G.S.) hydrological unit code in which the affected waterbody is located is also entered into the database. The U.S.G.S. hydrological unit code system identifies over 2,000 watersheds nationwide. Wetland mitigation is entered in the database as acres of wetlands that are required to be restored, created, enhanced, and preserved. Mitigation for impacts authorized by NWPs is also tracked by the method of mitigation (i.e., mitigation provided by permittee, mitigation bank, or some other method, such as an in lieu fee program) and acreage of compensatory mitigation.

For the NWP program, the Corps is monitoring: (1) the number of verified authorizations; (2) the number of requests where discretionary authority was exercised because the activity would have resulted in more than minimal adverse effects; (3) the number of NWP authorization requests that were denied and an individual permit review was required; (4) the number of NWP authorization requests that were withdrawn because no permit was required; (5) the number of NWP authorization requests that were withdrawn based on the applicant's decision; and (6) the number of NWP authorization requests that were withdrawn because the Corps received more than one request for the same project (i.e., an accounting error occurred).

In addition, the Corps is collecting data on the impact of the NWPs on Federally-listed endangered and threatened species and their critical habitat. The Corps is monitoring whether or not a particular activity is proposed in critical habitat for a Federally-listed endangered or threatened species. The Corps is also collecting data on which endangered or threatened species are involved in verified NWP activities, as well as the ESA determination for that activity (i.e., no effect, not likely to adversely affect, no jeopardy/no adverse modification, or jeopardy/adverse modification).

As part of its effort to develop NWPs to replace NWP 26, the Corps has been collecting more data on the types of activities authorized by NWP 26. For this data collection effort, these types of activities are classified as follows: institutional, agricultural, silvicultural, mining aggregates, mining other, retail individual, retail multiple, residential multiple, industrial, transportation, storm water management, impoundment, treatment facility, or ''other''. The Corps is also classifying these activities into the following categories: commercial, non-commercial, and governmental. For every NWP action, the location of the impact area within the watershed is recorded as either: (1) above headwaters or in isolated waters, or (2) below headwaters and not in isolated waters. When NWP 26 expires, the Corps will no longer collect the data mentioned in this paragraph.

Data collection requires a balance between the amount of work required to evaluate permit applications and the usefulness of the data to monitor the impacts of the authorized activities on the aquatic environment. The amount and types of collected information should be limited to the data that is needed for cumulative impact assessment while allowing districts the time and personnel resources to effectively evaluate permit applications and conduct enforcement activities. Corps districts will continue to monitor regulated activities on a watershed basis to ensure that the activities authorized by NWPs do not result in more than minimal cumulative adverse effects on the aquatic environment in a particular watershed. In addition, data collection helps the Corps monitor the effects of authorized activities on endangered and threatened species. In the future, the Corps will evaluate our current overall data collection efforts on standard and general permits, including NWPs, to better and more consistently assess the effects of these actions on the aquatic environment.

Process for Issuing the New and Modified NWPs

The process for issuing the proposed new and modified NWPs is illustrated in Figure 1. The regional conditioning and 401/CZM certification processes are also illustrated in Figure 1. The proposal in this **Federal Register** is the beginning of this process. During the 60-day comment period, there will be a public hearing in Washington, DC to solicit comments on the proposed new and modified NWPs. We will initially review the comments received in response to this **Federal Register** notice with a task force staffed by Corps regulatory field personnel. Upon completion of our initial review of the comments, we will complete an initial draft of the final NWPs and begin agency coordination; this process will last approximately 2 months. After agency coordination is finished, we will complete the final version of the NWPs for publication in the **Federal Register** by December 28, 1998. The State 401/CZM agencies will have 60 days to complete their certification decisions. The Corps will then finalize its regional conditions and then certify that the NWPs, with any regional conditions or geographic revocations, will only authorize activities with minimal adverse environmental effects, both individually and cumulatively. The NWPs will become effective 90 days later, as NWP 26 expires. The Corps regional conditioning and 401/CZM certification processes are discussed elsewhere in this notice.

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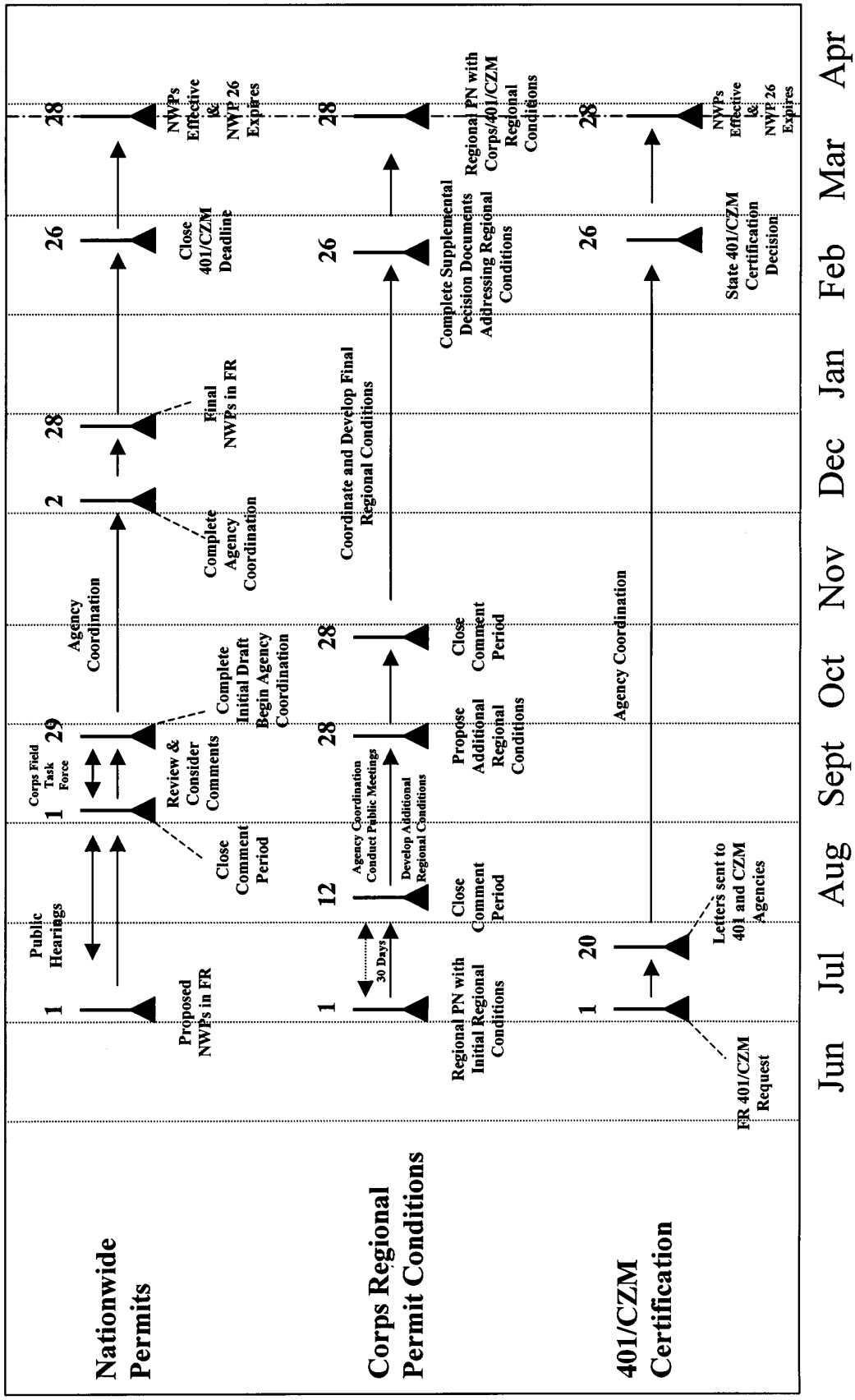
Nationwide Permit 26 Replacement Milestones



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Regional Conditioning of Nationwide Permits

As previously discussed in this notice, the Corps is committed to developing a package of replacement permits with demonstrably less environmental impact than the permit they replace. An important element in achieving this goal is the successful implementation of a significantly improved regionalization process. The coordinated involvement of States, Tribes, the public, and others, at the District level, will assist the Corps in identifying appropriate conditions and in developing permits that ensure effective protection at the local level of wetlands and other water resources. Moreover, effective regional conditioning of the NWPs by the Corps Districts will ensure compliance with the statutory requirement that the NWPs result in no more than minimal adverse effects on the aquatic environment and will support the Administration's goal of no net loss of aquatic functions and values on a watershed and programmatic basis.

Although a regionalization process has been required during past reissuances of the NWPs, we recognize that those efforts were not always the most effective in ensuring the development of appropriate conditions in each Corps District. We are confident, however, that the process proposed in today's notice is fundamentally different from those past approaches and will yield an improved environmental result that makes sense for local watersheds throughout the country. In general terms, the new approach provides the public, as well as other Federal and State/Tribal agencies, with two opportunities to comment on proposed Corps regional conditions before they are finalized, involves a more active and coordinated role for the Federal resource agencies throughout the process, and results in final decision documents that include certifications by each Division Engineer that each NWP, as conditioned, will authorize only minimal adverse environmental effects. The regionalization process is outlined in greater detail below.

There are two types of regional conditions: conditions added as part of the Section 401 water quality certification/Coastal Zone Management Act (401/CZM) process and conditions added by the Corps Divisions after consultation with Corps Districts, other agencies, and the public. The 401/CZM regional conditions for the proposed NWPs automatically become regional conditions on those NWPs. However, if the division engineer determines that those conditions do not meet the provisions of 33 CFR 325.4, the 401 certification and/or CZM concurrence will be treated as a denial without prejudice. The 401/CZM regional conditions must be announced by the final Corps public notice concerning the final NWPs. Corps regional conditions should generally not, but may, duplicate 401/CZM regional conditions. Corps regional conditions are added to NWPs by division engineers after a public notice comment period. Corps regional conditions cannot increase the terms or limits of the NWPs, delete or modify NWP conditions, change or be inconsistent with Corps regulations, be unenforceable, require an individual 401 water quality certification or CZM concurrence, or require another agency decision, review, or approval.

When each Corps district issues its initial public notice for the proposed NWPs, approximately concurrent with this **Federal Register** notice, the public notice will include: (1) Corps regional conditions for NWP 26, if any, that are applicable to any of the proposed NWPs; (2) the existing Corps regional conditions, if any, for the NWPs that are proposed to be modified (i.e., NWPs 3, 7, 12, 14, 27, and 40); and (3) any additional Corps regional conditions that the district is proposing at that time. This initial public notice will also request comments or suggestions for additional Corps regional conditions for the NWPs. The initial public notice may also include, for informational purposes only, any State/tribal 401/CZM regional conditions for NWP 26 and for the NWPs that are proposed to be modified. The public does not have the opportunity to comment on the State/tribal 401/CZM regional conditions through the Corps. There is a separate State/tribal process that involves the public regarding State/tribal 401/CZM certifications. Each district will announce the final State/tribal 401/CZM regional conditions in the final NWP public notice. Each district may also propose Corps regional conditions for any existing NWP in this initial public notice.

The initial public notice will request that the general public and other agencies submit comments on the NWPs and any regional conditions proposed by the Corps, to suggest additional Corps regional conditions, or to suggest specific watersheds or waterbodies where Corps regional conditions should be implemented, or geographic areas or specific watersheds or waterbodies where certain NWPs should be suspended or revoked. After the close of the comment period for the initial public notice, each district will coordinate with the Federal and State resource agencies to develop additional Corps regional conditions. In addition, each district will hold a public meeting to discuss regional conditioning of the NWPs with the public and representatives of Federal, State, tribal, and local agencies. Based on the initial input, the Corps will develop proposed regional conditions and each district will issue a second public notice to solicit comments on those proposed Corps regional conditions. After the close of the comment period for the second public notice, each district will coordinate with the Federal and State resource agencies to develop final Corps regional conditions. Prior to the publication of the final NWPs in the **Federal Register**, the District Engineer will meet with the Regional Administrator of EPA and the Regional Directors of FWS and NMFS to discuss the proposed regional conditions and resolve any disputes concerning Corps regional conditions.

Prior to the date the NWPs become effective, each Division Engineer will prepare supplemental decision documents addressing the regional conditions for each NWP. Each decision document will include a statement, by the Division Engineer, certifying that the Corps regional conditions imposed on the NWPs will ensure that those NWPs will authorize only activities with minimal adverse effects. After the Division Engineer establishes the Corps regional conditions, each district will issue final public notices announcing the final 401/CZM regional conditions and Corps regional conditions. Each district may propose additional Corps regional conditions in future public notices.

Corps regional conditions will be tailored to the issues related to the aquatic environment within each district, and will be used to ensure that the effects of the NWP program on the aquatic environment are minimal, both individually and cumulatively. Corps regional conditions can cover a large geographic area (e.g., a State or county), a particular waterbody or watershed, or a specific type of water of the United States (e.g., trout streams). Examples of Corps regional conditions that may be used by districts to restrict the use of the NWPs include:

- Restricting the types of waters of the United States where the NWPs may be used (e.g., fens, hemi-marshes, prairie potholes, bottomland hardwoods, etc.) or prohibiting the use of some or all of the NWPs in those types of waters or in specific watersheds;

• Restricting or prohibiting the use of NWPs in areas covered by a Special Area Management Plan, or an Advanced Identification study with associated regional general permits;

• Adding ''Notification'' requirements to NWPs to require PCNs for all work in certain watersheds or certain types of waters of the United States, or lowering the PCN threshold;

• Reducing the acreage thresholds in certain types of waters of the United States;

• Revoking certain NWPs on a geographic or watershed basis;

• Restricting activities authorized by NWPs to certain times of the year in certain waters of the United States, to minimize the adverse effects of those activities on areas used by fish or shellfish for spawning, nesting wildlife, or other ecologically cyclical events.

The Corps regional conditions implemented by each district do not supersede the general conditions of the nationwide permit program. The general conditions address the Endangered Species Act, the National Historic Preservation Act of 1966, the Wild and Scenic Rivers Act, Section 401 water quality certification, Coastal Zone Management, navigation, etc. Given the extent of the coordination already mandated by Federal law, the addition of regional conditions at the State, Tribal, watershed, or geographic level will help ensure that important public interest factors are considered when evaluating projects for NWP authorization.

Comments on regional issues and regional conditions must be sent to the appropriate District Engineer, as indicated below:

Alabama
Mobile District Engineer, ATTN: CESAM–OP–S, 109 St. Joseph Street, Mobile, AL 36602–3630

Alaska
Alaska District Engineer, ATTN: CEPOA–CO–R, P.O. Box 898, Anchorage, AK 99506–0898

Arizona
Los Angeles District Engineer, ATTN: CESPL–CO–R, P.O. Box 2711, Los Angeles, CA 90053–2325

Arkansas
Little Rock District Engineer, ATTN: CESWL–CO–P, P.O. Box 867, Little Rock, AR 72203–0867

California
Sacramento District Engineer, ATTN: CESPK–CO–O, 1325 J Street, Sacramento, CA 95814–4794

Colorado
Albuquerque District Engineer, ATTN: CESPA–CO–R, 4101 Jefferson Plaza NE, Rm 313, Albuquerque, NM 87109

Connecticut
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751

Delaware
Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East Philadelphia, PA 19107–3390

Florida
Jacksonville District Engineer, ATTN: CESAJ–CO–R, P.O. Box 4970, Jacksonville, FL 32202–4412

Georgia
Savannah District Engineer, ATTN: CESAS–OP–F, P.O. Box 889, Savannah, GA 31402–0889

Hawaii
Honolulu District Engineer, ATTN: CEPOH–ET–PO, Building 230, Fort Shafter, Honolulu, HI 96858–5440

Idaho
Walla Walla District Engineer, ATTN: CENWW–OP–RF, 210 N. Third Street, City-County Airport, Walla Walla, WA 99362–1876

Illinois
Rock Island District Engineer, ATTN: CEMVR–RD, P.O. Box 004, Rock Island, IL 61204–2004

Indiana
Louisville District Engineer, ATTN: CELRL–OR–F, P.O. Box 59, Louisville, KY 40201–0059

Iowa
Rock Island District Engineer, ATTN: CEMVR–RD, P.O. Box 2004, Rock Island, IL 61204–2004

Kansas
Kansas City District Engineer, ATTN: CENWK–OD–P, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896

Kentucky
Louisville District Engineer, ATTN: CELRL–OR–F, P.O. Box 59, Louisville, KY 40201–0059

Louisiana
New Orleans District Engineer, ATTN: CEMVN–OD–S, P.O. Box 60267, New Orleans, LA 70160–0267

Maine
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751

Maryland
Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715

Massachusetts
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751

Michigan
Detroit District Engineer, ATTN: CELRE–CO–L, P.O. Box 1027, Detroit, MI 48231–1027

Minnesota
St. Paul District Engineer, ATTN: CEMVP–CO–R, 190 Fifth Street East, St. Paul, MN 55101–1638

Mississippi
Vicksburg District Engineer, ATTN: CEMVK–CO–0, 201 N. Frontage Road, Vicksburg, MS 39180–5191

Missouri
Kansas City District Engineer, ATTN: CENWK–OD–P, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896

Montana
Omaha District Engineer, ATTN: CENWO–OP–R, 215 N. 17th Street, Omaha, NE 68102–4978

Nebraska
Omaha District Engineer, ATTN: CENWO–OP–R, 215 N. 17th Street, Omaha, NE 68102–4978

Nevada
Sacramento District Engineer, ATTN: CESPK–CO–O, 1325 J Street, Sacramento, CA 95814–2922

New Hampshire
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751

New Jersey
Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390

New Mexico
Albuquerque District Engineer, ATTN: CESWA–CO–R, 4101 Jefferson Plaza NE, Rm 313, Albuquerque, NM 87109

New York
New York District Engineer, ATTN: CENAN–OP–R, 26 Federal Plaza, New York, NY 10278–9998

North Carolina
Wilmington District Engineer, ATTN: CESAW–CO–R, P.O. Box 1890, Wilmington, NC 28402–1890

North Dakota
Omaha District Engineer, ATTN: CENWO–OP–R, 215 North 17th Street, Omaha, NE 68102–4978

Ohio
Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070

Oklahoma
Tulsa District Engineer, ATTN: CESWT–OD–R, P.O. Box 61, Tulsa, OK 74121–0061

Oregon
Portland District Engineer, ATTN: CENWP–PE–G, P.O. Box 2946, Portland, OR 97208–2946

Pennsylvania
Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715

Rhode Island
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751

South Carolina
Charleston District Engineer, ATTN: CESAC–CO–P, P.O. Box 919, Charleston, SC 29402–0919
South Dakota
Omaha District Engineer, ATTN: CENWO–OP–R, 215 North 17th Street, Omaha, NE 68102–4978
Tennessee
Nashville District Engineer, ATTN: CELRN–OR–F, P.O. Box 1070, Nashville, TN 37202–1070
Texas
Ft. Worth District Engineer, ATTN: CESWF–OD–R, P.O. Box 17300, Ft. Worth, TX 76102–0300
Utah
Sacramento District Engineer, ATTN: CESPK–CO–O, 1325 J Street, CA 95814–2922
Vermont
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751
Virginia
Norfolk District Engineer, ATTN: CENAO–OP–R, 803 Front Street, Norfolk, VA 23510–1096
Washington
Seattle District Engineer, ATTN: CENWS–OP–RG, P.O. Box 3755, Seattle, WA 98124–2255
West Virginia
Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070
Wisconsin
St. Paul District Engineer, ATTN: CEMVP–CO–R, 190 Fifth Street East, St. Paul, MN 55101–1638
Wyoming
Omaha District Engineer, ATTN: CENWO–OP–R, 215 North 17th Street, NE 68102–4978
District of Columbia
Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715
Pacific Territories
Honolulu District Engineer, ATTN: CEPOH–ET–PO, Building 230, Fort Shafter, Honolulu, HI 96858–5440
Puerto Rico & Virgin Islands
Jacksonville District Engineer, ATTN: CESAJ–CO–R, P.O. Box 4970, Jacksonville, FL 32202–4412

State (or Tribal) Certification of Nationwide Permits

State or tribal water quality certification pursuant to Section 401 of the Clean Water Act, or waiver thereof, is required for activities authorized by NWPs which may result in a discharge into waters of the United States. In addition, any State with a Federally approved Coastal Zone Management (CZM) Plan must agree with the Corps determination that activities authorized by NWPs which are within, or will affect any land or water uses or natural resources of the State's coastal zone, are consistent with the CZM plan. Section 401 water quality certifications and/or CZM consistency determinations may be conditioned, denied, or authorized for parts of the NWPs.

The Corps believes that, in general, the activities authorized by the NWPs will not violate State or tribal water quality standards and will be consistent with State CZM Plans. The NWPs are conditioned to ensure that adverse environmental effects will be minimal and are the types of activities that would be routinely authorized, if evaluated under the individual permit process. The Corps recognizes that in some States or tribes there will be a need to add regional conditions or individual State or tribal review for some activities to ensure compliance with State or tribal water quality standards or consistency with State CZM Plans. The Corps goal is to develop such conditions so that the States or tribes can issue 401 water quality certifications or CZM consistency agreements. Therefore, each Corps district will initiate discussions with their respective States or tribes, as appropriate, following publication of this proposal to discuss issues of concern and identify regional modification and other approaches to the scope of waters, activities, discharges, and notification, as appropriate, to resolve these issues. Note that there will be some States where an SPGP has been adopted and the NWPs have been wholly or partially revoked. Concurrent with today's proposal, Corps districts may be proposing modification or revocation of the NWPs in States where SPGPs will be used in place of some or all of the NWP program.

Section 401 of the Clean Water Act: This **Federal Register** notice of these NWPs serves as the Corps application to the States, tribes, or EPA, where appropriate, for 401 water quality certification of the activities authorized by these NWPs. The States, tribes, and EPA, where appropriate, are requested to issue, deny, or waive certification pursuant to 33 CFR 330.4(c) for these NWPs.

Proposed NWPs A, B, C, D, E, and F, and the proposed modifications to NWPs 12, 14, 27, and 40 involve activities which would result in discharges and therefore 401 water quality certification is required.

The proposed modifications to NWPs 3 and 7 involve various activities, some of which may result in a discharge and require 401 water quality certification and others of which do not. State denial of 401 water quality certification for any specific NWP affects only those activities which may result in a discharge. For those activities not involving discharges, the NWP remains in effect.

If a State denies a 401 water quality certification for certain activities within that State, then the Corps will deny NWP authorization for those activities without prejudice. Corps districts will issue provisional NWP verification letters upon receipt of a PCN for such projects. The provisional verification letter will contain all general and regional conditions as well as any project specific conditions the Corps determines are necessary, and will notify the applicant that they must obtain a project specific Section 401 water quality certification, or waiver thereof, prior to starting work in waters of the United States. Anyone wanting to perform such activities where a PCN is not required must first obtain a project specific 401 water quality certification or waiver thereof from the State before proceeding under the NWP. This requirement is provided at 33 CFR 330.4(c).

Section 307 of the Coastal Zone Management Act (CZMA): This **Federal Register** notice serves as the Corps determination that the activities authorized by these NWPs are consistent with States' CZM programs, where applicable. This determination is contingent upon the addition of State CZM conditions and/or regional conditions or the issuance by the State of an individual consistency concurrence, where necessary. The States are requested to agree or disagree with the consistency determination pursuant to 33 CFR 330.4(d) for these NWPs.

The Corps CZMA consistency determination only applies to NWP authorizations for activities that are within, or affect any land or water uses or natural resources of a State's coastal zone. NWP authorizations for activities that are not within or would not affect a State's coastal zone are not contingent on such State's agreement or disagreement with the Corps consistency determinations.

If a State disagrees with the Corps consistency determination for certain activities, then the Corps will deny authorization for those activities without prejudice. Corps districts will issue provisional NWP verification letters upon receipt of a PCN for such projects. The provisional verification letter will contain all general and regional conditions as well as any project specific conditions the Corps

determines are necessary, and will notify the applicant that they must obtain a project specific CZMA consistency determination prior to starting work in waters of the United States. Anyone wanting to perform such activities where a PCN is not required must present a consistency certification to the appropriate State agency for concurrence. Upon concurrence with such consistency certifications by the State, the activity would be authorized by the NWP. This requirement is provided at 33 CFR 330.4(d).

Discussion of Proposed Nationwide Permits

The following is a discussion of the new NWPs we are proposing to issue. We have identified these NWPs by letters received in response to the December 13, 1996, **Federal Register**, Final Notice of Issuance, Reissuance, and Modification of Nationwide Permits (61 FR 65874) and as a result of a workshop at the Corps 1997 Biennial National Regulatory Program Conference. If issued, they would be placed at a reserved NWP number or given a new number. The proposed modification to NWP 29 is discussed at the end of the preamble.

A. Residential, Commercial, and Institutional Activities

One commenter recommended an NWP to authorize the construction of residential developments and associated activities, including roads, stormwater management facilities, and amenities for recreation, such as golf courses, swimming pools, playing fields, and hiking and biking trails.

Similar comments were received recommending that the Corps develop an NWP for the construction of industrial and office developments, including retail and recreational facilities. Another commenter recommended an NWP for the development and modification of commercial real estate projects, with different thresholds for site plan development and the construction of roads and utilities. A third commenter recommended an NWP for commercial and industrial activities. An NWP for commercial development activities was also recommended by the participants at the 1997 Biennial National Regulatory Program Conference workshop.

Comments were also received recommending an NWP for the construction of Federal, State, Tribal and local government buildings and institutional buildings, including, but not limited to, schools, fire stations, public works buildings, libraries, hospitals and places of worship, and their attendant features (septic systems, parking lots, loading docks, playgrounds, etc.).

From May 1, 1997, through December 31, 1997, NWP 26 was used to authorize 1,581 residential, commercial or institutional developments, impacting approximately 835 acres of wetlands and 42,190 linear feet of stream bed. Approximately 2,634 acres of compensatory mitigation were provided to offset the adverse environmental effects of these projects.

The Corps is proposing an NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding wetlands contiguous to tidal waters, for residential, commercial, and institutional development activities, and associated infrastructure, including utilities, roads, driveways, and sidewalks. Infrastructure is integral to residential, commercial, and institutional development activities, and should be included as a part of the single and complete project for NWP authorization, unless the road or utility line is a component of a separate linear project that will provide service to other residential subdivisions, commercial sites, or other areas.

This NWP is intended to authorize the construction of residential developments (particularly subdivisions), commercial developments, and institutional developments with minimal impacts that comply with the terms and conditions of the permit. These types of activities are currently authorized by NWP 26. This NWP is not intended to replace NWP 29, which authorizes the construction of a single family residence to be used only by the person who will use the house as a personal residence. Contractors and commercial developers cannot use NWP 29 to construct a residence which would subsequently be offered for sale upon completion. Furthermore, NWP 29 authorizes discharges into all non-tidal waters of the United States, whereas NWP A authorizes discharges into non-tidal waters of the United States, excluding non-tidal wetlands contiguous to tidal waters.

The Corps is also considering and seeking comments on options to establish acreage limits for this NWP. One option would be to establish a simple acreage limit, such as 3 acres, for a single and complete project. Another option would be to establish a sliding scale or indexing of impact acreage limits for this NWP, based on parcel size, percentage of wetlands on the parcel, or other criteria. An example of such a sliding scale, based on parcel size, is shown in the table below:

Parcel Size	Maximum acreage loss authorized
Less than 5 acres	¼ acre.
5–10 acres	½ acre.
10–15 acres	1 acre.
15–100 acres	2 acres.
Greater than 100 acres	3 acres.

Such a scheme helps ensure minimal adverse impacts by authorizing smaller impacts for smaller projects and encouraging planning of developments that reduces impacts to aquatic resources. For example, under a sliding scale, a 25-acre development could result in the loss of only 2 acres of waters of the United States, whereas under a simple acreage limit the permittee could impact up to 3 acres. For NWP A, the Corps is soliciting comments on the use of a sliding scale, as well as acreage for parcel sizes and impacts to waters of the United States that would be used for the sliding scale. The Corps is also seeking comments on the benefits and drawbacks of such a sliding scale. The Corps is also seeking comments on the PCN threshold(s) that would be used in conjunction with the sliding scale of acreage limitation.

The Corps is proposing to require a PCN for losses of greater than ⅓ acre of non-tidal waters of the United States, or for any project that would result in the loss of any open waters, such as perennial or intermittent stream beds or lakes. The PCN will be subject to Corps-only review where the project would result in the loss of 1 acre or less of waters of the United States, and to review by the Corps and coordinating agencies where the loss of waters of the United States would exceed 1 acre. As part of the PCN, applicants must submit a written statement to the District Engineer explaining why discharges in waters of the United States must occur, what measures were taken to avoid and minimize impacts, and how the permittee will provide compensatory mitigation for those impacts. We have conditioned this NWP to require compensatory mitigation for projects resulting in the loss of greater than ⅓ acre of waters of the United States. In general, compensatory mitigation for losses below 1 acre will be provided most effectively through mitigation banks and in lieu fee programs. The compensatory mitigation proposal required for the PCN does not have to include detailed plans and implementation schedules, but must adequately describe the proposal so that

the District Engineer can determine if the proposed compensatory mitigation is appropriate. If the project involves streams or other open water, then buffers, including upland areas adjacent to the open waters, to these areas may be required as a part of the compensatory mitigation proposal. The permittee may be required to submit detailed compensatory mitigation plans at a later date as a special condition of the NWP authorization unless a mitigation bank or in lieu fee program is used to provide the compensatory mitigation. For many of these types of projects, the Corps believes that compensatory mitigation is necessary to offset adverse impacts to waters of the United States.

The PCN requirement will allow district engineers to assert discretionary authority when they have determined that the adverse effects of the proposed work will be more than minimal. The Corps believes that the issuance of this NWP, along with its terms, limitations, and general conditions, as well as any regional or case-specific conditions, will ensure that the authorized work will have no more than minimal adverse effects, both individually and cumulatively, on the aquatic environment on a watershed basis. Projects authorized by this NWP must be designed to avoid and minimize impacts to waters of the United States to the extent practicable on the project site. In addition, the project design must reduce adverse effects to water quality by maintaining off-site upstream and downstream baseflow conditions, providing for stormwater management, and normally maintaining a vegetated buffer zone if the project occurs in the vicinity of open water. Through regional conditions, district engineers may require additional watershed protection techniques, if appropriate.

This NWP cannot be used to authorize recreational facilities that are not an integrated component of a residential, commercial, or institutional development. The development of a master planned community that includes residential, recreation, and commercial activities may be authorized by NWP B. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by this activity.

B. Master Planned Development Activities

One commenter proposed an NWP to authorize discharges of dredged or fill material to construct residential, commercial, and industrial developments that are planned or designed for the long term protection of aquatic resources and are owned and managed by a single owner. Such developments are designed for residential, industrial, and/or commercial uses, as well as recreational uses. Master planned developments can provide long term protection of valuable aquatic resources by carefully integrating the development into the landscape and protecting the remaining wetlands, open waters, and associated buffers. These developments typically set aside wetlands, riparian corridors, and valuable upland habitats for restoration, enhancement, or preservation as part of the plan for the area.

Increasingly, counties and local communities across the country are encouraging mixed-use development and encouraging land use planning that incorporates consideration of the environment. Such initiatives provide communities with an opportunity to address a variety of concerns including protecting sensitive natural areas, consolidating infrastructure, and maximizing the delivery of urban services. Through local zoning and land use programs, governments are working to achieve these goals by encouraging the development of environmentally responsible, multiple-use communities. The Corps is committed to ensuring that the NWP program is consistent with these goals and objectives and is proposing this NWP to build on the incentives currently provided by State and local governments.

The Corps is proposing an NWP for master planned development activities that are designed, constructed, and managed to conserve and enhance the functions and values of waters of the United States on the project site. The Corps has designed NWP B to authorize only those master planned development activities that are designed, constructed, and managed to integrate multiple uses in a manner that conserves and enhances the functions and values of the water resources on the project site. Specifically, activities authorized by this permit often would incorporate several land use categories, including residential uses (e.g., single family homes, apartments), commercial uses (e.g., stores, hotels, office buildings), industrial uses (e.g., water treatment facilities), transportation uses (e.g., light rail, roads), and open space uses (e.g., parks, trails).

This NWP authorizes discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands contiguous to tidal waters, for the construction or expansion of master planned developments. The Corps is seeking comments on the definition of master planned development to use for this NWP. A PCN will be required for all activities authorized by this NWP. The PCN must include a wetland assessment that utilizes a functional assessment method approved by the District Engineer. Permittees will be required to avoid and minimize impacts to waters of the United States to the maximum extent practicable and must include a written statement detailing compliance with this condition. The PCN must also indicate on the site plans all aquatic areas and adjacent buffer zones that would be protected by conservation easements or other measures. All preserved wetland areas, streams, mitigation areas, and buffer zones adjacent to waters of the United States on the site must be protected by a deed restriction, conservation easement, or other method of conservation and preservation as a condition of the permit. The District Engineer will review the proposed master planned development activities to ensure that these features are designed to ensure resource conservation and protection, and to protect aquatic resources.

The Corps is also considering and seeking comments on options to establish acreage limits for this NWP. One option would be to establish a simple acreage limit, such as 10 acres, for a single and complete project. Another option would be to establish acreage limits for master planned developments that are determined by indexing the upper limit of adverse wetland impact to the size of the parcel, to the amount of wetlands on the parcel, or to a percentage of the jurisdictional waters of the United States on a project site. The following table is an example of such a sliding scale, which indexes the acreage limit to parcel size:

Parcel size	Maximum acreage loss authorized
100–200 acres	3 acres.
200–300 acres	5 acres.
300–500 acres	7 acres.
Greater than 500 acres	10 acres.

In this example, master planned developments constructed on parcels less than 100 acres in size could not be authorized by this NWP. Instead, NWP A or another NWP may be used to authorize the development, if appropriate.

Examination of the above table shows that, in general, smaller project sites would be allowed a relatively higher wetland impact limit, as a percentage of

parcel size, than would larger sites, although the ratio does not decrease proportionately as the parcel size increases. (This same relationship already occurs under the existing NWP program, due to the Corps requirements for on-site minimization and avoidance, and the use of regional conditions). The use of a sliding scale can be justified by the limited flexibility that a smaller project site affords an applicant, whereas a larger project site affords an applicant more options in developing the property, and consequently, more opportunities to minimize wetland impacts. Such a method would differ from most NWPs, in that most NWPs have acreage limits that do not vary with the size of the project site. An indexed or varying scale for the maximum threshold would encourage the master planning of larger sites and discourage fragmenting projects to get more acres of impact to waters of the United States.

Other methods of determining acreage limits that we are considering would allow the applicant to adversely impact a certain percentage of the jurisdictional waters of the United States on the project site (e.g., 2% to 10% of the jurisdictional areas), or an amount of jurisdictional waters equal to a percentage of the parcel size. For example, at 1% of the total parcel size, a project on a 200 acre parcel could impact up to 2 acres of waters of the United States, and at 2% of the parcel size, a project on a 200 acre parcel could impact up to 4 acres of waters of the United States, etc.

These are just a few examples of an indexed or varying maximum threshold concept that the Corps is considering. Any such concept, if adopted, would still be subject to on-site avoidance and minimization requirements, as well as regional conditions and/or other restrictions. Any such permits would have to be carefully conditioned, and the respective acreage limits (and implied incentives) studied closely in order for these proposals to lead to a net reduction in the theoretical acreage of impacted waters of the United States. The Corps is seeking comments on the practicability of such concepts, the conditions that should be attached to any such concepts, and the advantages or disadvantages of implementing such concepts.

District engineers will consider the use of discretionary authority when sensitive and/or unique areas or areas with significant social or ecological functions and values may be adversely affected by the work. Although we have proposed a high acreage limit for this NWP, impacts must be avoided and minimized to the maximum extent practicable, with appropriate compensatory mitigation to offset losses. Moreover, the comprehensive approach to the watershed area to be developed and the fact that all remaining waters of the United States and buffers will be protected will benefit the overall aquatic system. The compensatory mitigation should, in most cases, be on site and be incorporated into the development. District engineers can impose special conditions on a case-by-case basis to ensure the impacts are minimal. Regional conditions can also be used to limit the use of this NWP in high value aquatic ecosystems.

C. Stormwater Management Facilities

The Corps is proposing an NWP to authorize the discharge of dredged or fill material into non-Section 10 waters of the United States, including wetlands, for the construction and maintenance of stormwater management facilities. This permit may be used to authorize the construction of new stormwater management facilities including: the excavation for stormwater ponds/facilities, detention, and retention basins; installation and maintenance of water control structures, outfall structures, and emergency spillways; and the maintenance excavation of existing stormwater management ponds/facilities, detention, and retention basins. This permit may not be used to authorize any activities for the construction of ponds for other purposes.

The proposed acreage limit is 2 acres for the construction of new stormwater management facilities in order to authorize the construction of consolidated regional stormwater management facilities. There is no acreage limit proposed for the maintenance of stormwater management facilities because maintenance of these facilities is necessary to ensure the designed capacity is maintained for water quality improvements and reduction of downstream erosion and flooding. Notification will be required for the loss of greater than ⅓ acre of waters of the United States, including wetlands, the loss of greater than 500 linear feet of stream bed, or the maintenance of existing stormwater management facilities causing the loss of greater than 1 acre of wetlands. Between May 1, 1997, and December 31, 1997, NWP 26 was used to authorize the construction or maintenance of 358 stormwater management facilities. These projects resulted in the loss of approximately 107 acres of wetlands, and 33,170 linear feet of stream bed, with 205 acres of compensatory mitigation provided by permittees. In most cases, the construction of stormwater management facilities will be included in project specific permits (e.g., NWPs A, B, C, and D). There may also be cases where the construction of a stormwater management facility will be required, not in association with the construction of a residential, commercial, or institutional development, but for a watershed management plan.

Placement of stormwater management facilities in jurisdictional areas in certain circumstances may provide more environmentally sensitive planning and benefits to the aquatic environment than placing them in the uplands. By incorporating best management practices and watershed protection techniques that provide for long-term protection and enhancement of aquatic resources, and requiring a PCN for certain activities, the Corps believes that impacts to the aquatic environment will be minimal for this NWP. In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the impacts to the aquatic environment are minimal or assert discretionary authority to require an individual permit for the work. Division engineers may place regional conditions on this NWP. Such regional conditions may utilize interagency regional guidance that already exists, to the extent that such guidance complies with Corps regulations and allows the development of enforceable regional conditions.

D. Passive Recreational Facilities

One commenter recommended an NWP to authorize the construction of recreational facilities, such as playgrounds, playing fields, swimming pools and related structures, biking and hiking trails, and golf courses. Another commenter proposed an NWP to authorize discharges associated with the expansion or maintenance of ski areas. NWP 26 has been used to construct recreational facilities in headwaters and isolated wetlands. From May 1, 1997, through December 31, 1997, NWP 26 was used to authorize 57 recreational facilities, but this data does not include information on the specific types of recreational facilities authorized by NWP 26, or the acreage of impacts and compensatory mitigation.

The Corps is proposing an NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands contiguous with tidal waters, for the construction or expansion of passive recreational facilities. For the purposes of this NWP, passive

recreational facilities are defined as low-impact recreational facilities that are constructed so that they do not substantially change preconstruction grades or deviate from natural landscape contours for the following types of activities: biking, hiking, camping, running, and walking. Passive recreational facilities may also include the construction or expansion of golf courses or ski areas, provided they are designed to be integrated with existing landscape features, do not require substantial amounts of grading or filling, and adverse effects to wetlands and riparian areas are minimized to the extent practicable. District engineers may require vegetated buffers to wetlands and streams and water quality management techniques as measures to ensure the impacts caused by these recreational facilities are minimal.

Passive recreational facilities can be either public or private and will not have a substantial amount of buildings and other impervious surfaces, such as concrete or asphalt. This NWP also authorizes the construction of support facilities such as office buildings, maintenance buildings, storage sheds, and stables, but does not authorize the construction of associated hotels or restaurants. Some grading and filling will be necessary to construct these facilities, such as constructing a gravel running trail or paving a narrow bike path through a park. Timber decks and walkways should be used where possible to minimize adverse impacts to waters of the United States. Campgrounds authorized by this NWP should have few impervious surfaces such as pavement and should consist of small cleared areas for tents and picnic tables connected by dirt or gravel trails or roads, with as little grading and filling as possible.

The maximum acreage loss authorized by this NWP is 1 acre of non-tidal waters of the United States (wetlands contiguous to tidal waters are also excluded). The Corps is proposing to require a PCN for losses of greater than ⅓ acre of waters of the United States and/or greater than 500 linear feet of stream bed. Recreational facilities authorized by this NWP should be designed to protect valuable aquatic and upland habitats through avoidance and minimization. Compensatory mitigation will normally be required for losses of greater than ⅓ acre of waters of the United States. A permittee may provide compensatory mitigation through individual restoration, enhancement, or creation of aquatic habitats, or through the preservation of adjacent open or green space, particularly those that include wetland and riparian habitats. Compensatory mitigation can also be provided through in lieu fee programs, land trusts, and mitigation banks.

This NWP does not authorize the construction or expansion of campgrounds for mobile homes, trailers, or recreational vehicles. This NWP does not authorize the construction of playing fields, basketball or tennis courts, race tracks, stadiums, or arenas. Any recreational facility not authorized by this NWP may be authorized by another NWP, a regional general permit, or individual permit. Playing fields, playgrounds, and other golf courses may be authorized by NWP A if they are an integral part of a residential subdivision. Commercial recreational facilities may be authorized by NWP A. Playgrounds, ball fields, golf courses, parks, and trails may be authorized by NWP B if these facilities are part of a master planned development. The construction of hotels and conference centers that are commonly associated with recreational facilities may be authorized by NWP A.

By restricting this NWP to passive recreational facilities, we believe that the impacts to the aquatic environment will be minimal. In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the impacts to the aquatic environment are minimal or assert discretionary authority to require an individual permit for the work.

E. Mining Activities

During the 1996 NWP reissuance process, the Corps proposed an NWP for ''Mining Operations''. Based on the comments and information gathered during the process, the Corps decided to encourage the development of regional general permits, rather than to develop national limits to meet the minimal effects requirement. As a part of the initiative to replace NWP 26, the aggregate industry (i.e., sand, gravel, crushed and broken stone) and hard rock metal/mineral mining industry (i.e., extraction of metalliferous ores from subsurface locations) provided information and proposed draft NWPs that they believed would meet the minimal impact requirement.

The Corps has evaluated that input and developed a new proposed NWP for mining activity discharges that would have minimal impact (as conditioned) in certain aquatic ecosystems. We have organized the NWP around specific activities, within specific aquatic ecosystems. We have also provided separate sections for aggregate activities and for hard rock/mineral mining activities. This recognizes that while some of the discharges being regulated by the Corps are similar for both industries, there are considerable differences in the impacts associated with the subsequent processing of the materials being extracted.

The terms and conditions of this NWP as well as the typical State and local permitting requirements mining operations are subject to, serve to minimize potential resource use conflicts and make it likely that only those activities which have adequately addressed the issue of such potential conflicts would be in a position to consider using this NWP. Both industries are generally speaking highly regulated, often subject to State and local land use planning requirements and individual permits. The NWP does not obviate the need to obtain other authorizations required by law, [33 CFR 330.4(b)]. For example, hard rock/mineral mining operations often require National Pollution Discharge Elimination System (NPDES) permits for discharges associated with ore processing techniques, and those NPDES permits must be obtained.

This NWP is expected to be used primarily for commercial mining activities, although smaller, non-commercial operations may benefit from this NWP. These activities provide both public and private benefits by providing materials for construction, manufacturing, and other industries.

The Corps is proposing to authorize discharges of dredged or fill material associated with specific activities undertaken during the mining of aggregate materials (i.e., sand, gravel, crushed and broken stone) and hard rock/mineral mining at new and existing mining sites. Mining activities authorized by this NWP include: discharges from filling, excavation, and dredging; exploration; processing; construction of berms, haul roads, dikes, and road crossings; construction of settling ponds and settling basins; ditching and trenching; mechanized landclearing; storm water and surface water management; stream diversion or relocation; stockpiling; sediment and erosion controls; grading; and other activities involved in mining and mined land reclamation.

The Corps is proposing two options for the acreage limit for a single and complete mining project in paragraph (j). We are requesting comments on whether the acreage limit for a single and complete project should be 3 acres or 2 acres. The acreage limit for a single and complete project is a combination of the acreage limit for the specific mining activities and the acreage limit for support activities.

This NWP authorizes only those Section 404 discharges associated with

mining activities that have been considered to have minimal impacts, as conditioned. For example, any NWP notification for in-stream mining activities must include a discussion of necessary measures to prevent increases in stream gradient and water velocities to prevent adverse effects (e.g., head cutting, bank erosion) on upstream and downstream channel conditions, as well as measures to minimize adverse effects to downstream turbidity. We are particularly interested in comments concerning conditions that are appropriate for mining activities in the aquatic ecosystems we have identified.

While thresholds and limits have been developed for each type of aquatic ecosystem, during the notification and evaluation process the Corps may find that further conditioning of the nationwide permit for a specific activity, including relocating or further reduction of the impacts of the activity and/or additional compensatory mitigation, is necessary or that the project should be evaluated under the Corps individual permitting procedures. Specifically, if the District Engineer determines that a proposed activity will have more than minimal adverse environmental effects, the District Engineer will require an individual permit. This would result in a project specific alternatives analysis, including off-site alternatives.

This NWP requires that the permittee submit a reclamation plan with the notification. District engineers have the flexibility to assert discretionary authority and not authorize further mining activities under this NWP if there is mined land reclamation required for previously authorized mining activities that has not been completed. Subsequently, upon completion of the required mined land reclamation, the District Engineer may authorize further mining activities under this NWP.

This NWP sets forth criteria that, combined with the discretion of the District Engineer, and the regional conditioning that can take place at the district and State levels, help ensure that only minimal adverse environmental effects will result on a cumulative basis. With required compensatory mitigation for losses of wetlands, environmental gains in addition to adequate environmental protections can be anticipated as an end result of use of this NWP. It is reasonable to assume that the potential time and cost savings associated with use of this NWP will encourage applicants to design their project within the scope of the NWP rather than request an individual permit, which could potentially have a greater adverse impact. In addition, use of this NWP will enhance regulatory oversight of projects potentially encompassing much greater impacts.

Acreage limitations in this NWP restrict its applicability. Mining projects are of varying sizes, sometimes covering hundreds of acres, which include areas under Corps jurisdiction. Mandatory compensatory wetland mitigation ensures that losses of wetland functions are minimal on a cumulative basis. Furthermore, as a result of the notification requirements and the opportunity for regional conditioning, even small discharges can be ineligible for this NWP if the unique environmental function or ecological setting is determined to require further protection.

Mining companies have considerable experience in land reclamation, including the creation and restoration of wetland and riparian areas. Regulatory confusion surrounding wetlands created intentionally or unintentionally at mining operations serve as further testament to the ability to create wetlands as a part of the mining and reclamation process. We are requesting comments concerning the following position as a part of the NWP notice:

''Waterfilled depressions and pits, ponds, etc., created in any area not a ''water of the U.S.'', as a result of mining, processing, and reclamation activities, shall not be considered ''waters of the U.S.'' until one of the following occurs:

(1) All construction, mining, or excavation activities, processing activities and reclamation activities have ceased and the affected site has been fully reclaimed pursuant to an approved plan of reclamation; or

(2) All construction, mining, or excavation activities, processing activities and reclamation activities have ceased for a period of fifteen (15) consecutive years or the property is no longer zoned for mineral extraction, the same or successive operators are not actively mining on contiguous properties, or reclamation bonding, if required, is no longer in place; and the resulting body of water and adjacent wetlands meet the definition of ''waters of the U.S.'' (33 CFR 328.3 (a))."

This clarification would resolve a long-standing jurisdictional debate that has consumed much time and effort on the part of the regulated community and regulators alike, without contributing significantly to environmental protection. Asserting jurisdiction in such circumstances provides an incentive for operators to go out of their way to make sure that wetlands do not occur on their properties, thus depriving for the duration of normal activities, whatever benefits would have accrued to the area as a result of the temporary or permanent creation of wetlands. Similarly, such assertions lessen the likelihood of non-mitigation wetland creation for fear of regulatory problems.

F. Reshaping Existing Drainage Ditches

One commenter recommended an NWP to authorize the maintenance of ditches. The maintenance of drainage ditches constructed in waters of the United States does not require a Section 404 permit (i.e., the maintenance is exempt), provided the drainage ditch is returned to its original dimensions and configuration (see 33 CFR 323.4(a)(3)). However, the modification or new construction of drainage ditches in waters of the United States requires a Section 404 permit. NWP 26 has been used in the past to authorize this activity in headwaters and isolated wetlands.

The Corps is proposing an NWP to authorize discharges of dredged or fill material into non-Section 10 waters of the United States for reshaping existing drainage ditches by altering the cross-section of the ditch to benefit the aquatic environment. Since maintenance of drainage ditches to their original dimensions and configurations is exempt from Section 404 permit requirements, the purpose of this NWP is to encourage reshaping of ditches in a manner that provides benefits to the aquatic environment. The original dimensions and configuration of the ditch may not provide water quality benefits that could be achieved with a different configuration. For example, the banks of ditches can be graded at a gentler slope to reduce erosion and decrease sediment transport down the ditch by trapping sediments. Shallower slopes also increase the amount of vegetation along the bank of the ditch, which can decrease erosion, increase nutrient and pollutant uptake by plants, and increase the amount of habitat for wildlife. This NWP is limited to reshaping currently serviceable drainage ditches constructed in waters of the United States, provided the activity does not change the location of the drainage ditch. The centerline of the reshaped drainage ditch must be in essentially the same location as the centerline of the existing ditch. This NWP does not authorize reconstruction of drainage ditches that have become ineffective through abandonment or lack of regular maintenance. This NWP may not be used to relocate drainage ditches or to modify drainage ditches to increase the area drained by the ditch

(e.g., by widening or deepening the ditch beyond its original design dimensions or configuration) or to construct new drainage ditches if the previous drainage ditches have been neglected long enough to require reconstruction. This NWP does not authorize channelization or relocation of streams to improve capacity of the streams to convey water. The construction of new drainage ditches or the reconstruction of drainage ditches may be authorized by an individual permit, another NWP, or a regional general permit.

This NWP does not authorize the maintenance or reshaping of drainage ditches constructed in navigable waters of the United States (wetlands that are contiguous to Section 10 waters are also excluded). A Section 10 permit is required for the maintenance or modification of drainage ditches constructed in navigable waters of the United States.

The Corps is proposing to require notification for reshaping drainage ditches where the material excavated during reconfiguration is sidecast into waters of the United States. If the ditch is being maintained to its original dimensions and configuration and the excavated material is sidecast into waters of the United States, no notification is necessary because this activity is exempt and a Section 404 permit is not required. Compensatory mitigation for the work authorized by this NWP should not be required if the ditch is reshaped to improve water quality. This activity can be considered to be self-mitigating, in that reshaping the ditch will normally result in improvements in water quality and any wetland vegetation that inhabited the ditch prior to the work will recolonize the ditch. In addition, if the project proponent did the work in such a manner that qualified for the exemption, compensatory mitigation would not be required since the activity is exempt. Requiring compensatory mitigation for modifying the cross-sectional configuration of the ditch may encourage maintenance to the original dimensions and configuration and discourage reshaping the ditch to a more environmentally beneficial shape.

Division engineers can regionally condition this NWP to exclude certain waterbodies or require notification when waters or unique areas that provide significant social or ecological functions and values may be adversely affected by the work. Activities authorized by this NWP will have minimal adverse effect on the aquatic environment, since it is limited to existing drainage ditches and activities that improve water quality. District engineers can assert discretionary authority when very sensitive or unique areas may be adversely affected by these activities. It is unlikely that this NWP will result in a substantial increase in the Corps workload. The PCN requirement allows Corps districts, on a case-by-case basis, to add appropriate special conditions to ensure that the adverse effects are minimal. The District Engineer can also assert discretionary authority to require an individual permit for any activity that may have more than minimal adverse effects.

Discussion of Proposed Modifications to Existing Nationwide Permits

In response to comments received in reply to the December 13, 1996, **Federal Register** notice, the Corps is proposing to modify NWPs 3, 7, 12, 14, 27, and 40. These modifications will increase the number of activities authorized by these NWPs. The following is a discussion of our reasons for modifying these NWPs.

3. Maintenance

The Corps has proposed several modifications to this permit, as outlined in paragraphs (ii) and (iii) of the proposed permit. The Corps experience with NWP 3 to date has been very good; navigable waters have not been obstructed and adverse impacts to the aquatic environment are very minor. Furthermore, in many cases, use of NWP 3 actually enhances the aquatic environment. For example, replacing a damaged seawall often eliminates chronic turbidity caused by erosion. In paragraph (i) of the proposed modification, the Corps is retaining all of the original terms and conditions of this NWP. The Corps is proposing to add two related activities to this NWP: removal of accumulated sediments in the vicinity of existing structures and restoration of upland areas damaged by a storm, flood, or other discrete event.

Paragraph (ii) of the proposed modification will authorize the removal of accumulated sediments from stream beds and other open water areas in the vicinity of existing structures such as bridges and culverted road crossings. This modification also authorizes the placement of rip rap to protect the structure from scour. A new NWP to authorize this work was recommended as a result of a workshop at the 1997 Biennial National Regulatory Program Conference. From May 1, 1997, through December 31, 1997, NWP 26 was used 126 times to authorize the maintenance and clean-out of stream beds. The Corps believes that it is more appropriate to modify NWP 3 than to develop a new NWP for this activity.

The accumulation of sediments in the vicinity of structures is usually due to the structure's effects on sediment transport and flow patterns in the waterbody. These sediment deposits affect the ability of the structure to function effectively and may increase flooding in the area. In addition, these deposits can create barriers to the passage of fish and other aquatic organisms. Periodic removal of these aggraded materials is required to restore stream flow conditions and protect the integrity of the structure for the safety of the public.

Paragraph (ii) of the proposed modification of this NWP will be used more often than NWP 26 to authorize removal of sediments from the vicinity of structures because it is not limited to headwater streams where the median flow on an annual basis is less than 5 cubic feet per second. This activity will be authorized in all waters of the United States. Paragraph (ii) limits the amount of excavated material to the minimum necessary to restore the waterbody to its original dimensions (e.g., depth and width), for a maximum distance of 200 feet upstream and downstream from the structure. The amount of rip rap discharged for scour protection must be the minimum necessary to protect the structure. Excavated sediments must be deposited in an upland area, unless otherwise authorized by the District Engineer, and contained to prevent their reentry into the waterway. We are proposing to require a PCN for all work performed under this paragraph.

We believe that removal of sediments from the vicinity of these structures will have minimal adverse effects on the aquatic environment provided the amount of material removed is the minimum necessary to restore the stream to preconstruction dimensions (e.g., width and depth). Such work may also provide environmental benefits by restoring flow regimes and removing barriers to the movement of aquatic organisms. Flooding in the vicinity of the structure may also be reduced. The placement of rip rap for scour protection is also likely to result in only minimal adverse effects, because only small amounts of rip rap are typically needed to protect these structures. In those areas inhabited by submerged aquatic vegetation or other important aquatic organisms, the PCN requirement of this NWP will allow the District Engineer the opportunity to assert discretionary authority over the activity. In addition, regional or case-by-case special conditions such as time-of-year restrictions can be placed on specific activities or geographic areas.

This NWP will not authorize stream channelization or stream relocation projects. Stream channelization or relocation may be authorized by an individual permit, regional general permit, or other NWP. Removal of sediments from the vicinity of an existing structure in tidal waters may be authorized by an individual permit, regional general permit, or other NWP, such as NWP 19.

The PCN requirement will allow the District Engineer to ensure that the amount of sediment removed is the minimum necessary and consider the use of discretionary authority when important ecological functions are present or sensitive/unique areas may be adversely affected. Districts may impose regional or case-by-case special conditions to decrease the maximum distance to less than 200 linear feet upstream or downstream of the structure. Compensatory mitigation will typically not be required for work authorized by this NWP, since the work usually involves removal of recently aggraded sediments and may provide benefits for aquatic organisms by restoring flow regimes. Although a few streams will have aggraded sediments inhabited by vegetation, removal of these vegetated deposits will have minimal adverse effects on the stream. In circumstances where sediment deposits have developed extensive plant communities, such as in a braided stream, district engineers may require compensatory mitigation or assert discretionary authority to require an individual permit.

Paragraph (iii) of the proposed modification of NWP 3 will authorize discharges of dredged or fill material for the purpose of restoring uplands adjacent to waters of the United States where those uplands have been damaged by discrete events such as floods or storms. The purpose of this modification is to allow the reconstruction of shorelines, river banks, and other lands adjacent to open water areas to the extent and contours that existed prior to the damaging event. For example, the high banks of a river may be subjected to damaging flood flows, with the result that a substantial area of the bank becomes undercut and collapses into the river. The use of this permit would allow the discharge of fill material into the edge of the river in the quantities needed to rebuild the river bank. The installation of any bank stabilization measures needed to protect the restored area could be authorized under a separate permit, such as NWP 13. In order to qualify for this permit, the damage or loss of upland would have to be traceable to a specific event that has occurred within the 12 months prior to the District Engineer receiving notification of the proposed work. This permit may not be used to reclaim lands that have been lost due to long-term erosion processes, historic damage more than 12 months old, or to restore lands where no substantial evidence of previous land contours can be established. The determination of previous land contours, and the extent of restoration allowed under this permit, is the responsibility of the District Engineer. Proposals to reconfigure and armor the rebuilt bank that the District Engineer has determined to not qualify for this permit may be processed as an individual permit or general permit.

The 12 month notification deadline has been proposed to allow the Corps to establish that the damage has occurred recently, and to verify that the purpose of the permit application is to repair any immediate damage, and not to reclaim lands that may have existed in the past. For example, a river may slowly change course over a period of many years, with a corresponding evolution of the landscape. The meandering of a river is a natural process, and this NWP would not be applicable if a party wished to relocate the channel of the river to reconfigure a piece of property into a more usable form, or to relocate the channel to a historic configuration. Likewise, an old land survey of a property adjacent to a lake may not be presented as evidence of justification for use of this NWP, where the land in question was located in what is now the open waters of the lake, and the land was lost to the lake several years ago. The shorelines of lakes may change over time, and the 12 month limit of this proposed permit is needed to ensure that areas of open water are not reclaimed as dry land in a piecemeal fashion based on historic surveys. The 12 month time period also seems reasonable given that the affected parties would be interested in quickly repairing any damage that has occurred to their property. This permit does not require that the restoration be completed within 12 months; it only requires that the Corps be notified within 12 months of the date of the damage. Any work authorized by this permit would have to commence, or be under contract to commence, within 2 years of the date of the damage.

The need for this NWP is justified by the desire of landowners to quickly repair property damage, or to ensure that they will be able to restore the land when resources become available. A landowner who has suddenly been deprived of a valuable piece of property due to the effects of a flood or storm may sustain a substantial economic loss if he or she were unable to restore the damaged land quickly. The availability of this NWP would in many cases allow the landowner to repair the damage and minimize economic losses, without having to apply for an individual permit, which would require more time to process. Notification requirements and evidentiary conditions of this permit should ensure that the work is limited to that needed to restore recent damage, and should prevent the reclamation of historic lands.

This proposed modification to NWP 3 would also authorize minor dredging to remove obstructions or sediments deposited by the flood or storm. Dredging under paragraph (iii) of this NWP would be limited to a total of 50 cubic yards, and would be restricted to the extent needed to remove the obstruction. Any dredging requirements in excess of 50 cubic yards may be authorized by another general permit or an individual permit. The dredging provision of this NWP may not be used solely to provide a source of fill material needed for the restoration of uplands, nor may it be used to artificially deepen a waterbody, channelize a stream, or be used in place of a maintenance dredging operation.

It is anticipated that this NWP would only result in minimal impacts to the aquatic environment, since the areas that would be rebuilt were not waters of the United States prior to the damaging event, and the restoration of such lands should not result in a loss of aquatic habitat. Indeed, the actual restoration of the upland itself does not require a permit, because it is exempt under Section 404(f). The determination of the extent of waters of the United States should consider the contours of the affected upland area prior to the damaging event, and should not be based upon the current damaged condition of the property (i.e., the damaged area does not immediately become a water of the United States). As explained above, the applicant must provide evidence of the previous contours of the damaged land in order to qualify for this permit.

No upper acreage limit has been proposed for this activity, and mitigation will typically not be required for the work, since the restoration of uplands should not result in a loss of waters of the United States. While there is no upper limit, it is anticipated that most permittees would seek to restore small areas, such as the frontage of individual lots adjacent to streams or lakes in developed areas. The notification requirement would allow the Corps to alert other Federal and

State agencies, as necessary, such as State flood plain regulatory agencies. In addition, The Corps believes that the potential impacts from the removal of accumulated sediments near existing structures will be minimal. However, if these areas are inhabited by submerged aquatic vegetation or other important aquatic organisms, the PCN requirement of this NWP will allow the District Engineer the opportunity to assert discretionary authority over the activity. In addition, regional or case-by-case special conditions such as time-of-year restrictions can be placed on specific activities or geographic areas.

The Corps would only authorize those upland restoration projects that would be constructed in such a way as to result in no more than minimal impacts to the aquatic environment. Furthermore, this NWP would restrict the upland restoration to the extent that existed prior to the damage; however, the Corps would not require the applicant to make such full upland restoration. For example, should the applicant propose to restore only a part of the damaged upland, or to restore part of the damaged area in a way more beneficial to the aquatic environment, such as a wetland restoration, the Corps will usually agree to the plan. Any proposals to restore only a part of the damaged upland must originate with the applicant, and will not be required by the Corps.

The restoration of wetland areas and riparian zones damaged by storms may not be authorized with this NWP, however, these activities may be authorized by NWP 27. With regard to the use of this proposed permit with other NWPs (i.e., ''stacking''), the Corps would not allow the use of this permit in combination with NWP 18 or NWP 19. The Corps is soliciting comments on the requirements and methods needed to demonstrate the prior extent of the uplands to be restored, the practicability of the proposed 50 cubic yard dredging limit, the 12 month time limit for notification to the Corps, the 2 year time limit established for the work to commence.

7. Outfall Structures and Maintenance

A commenter recommended modification of NWP 35 to authorize maintenance dredging activities at utility facilities for three types of areas: barge canals and slips, dam headworks at hydropower plants, and intake and outfall structures and canals. Most of these activities require individual permits because they occur in navigable waters of the United States or below headwater streams. Currently, NWP 35 authorizes maintenance dredging of marina basins, boat slips, and access channels to marinas and boat slips.

The removal of debris from the headworks of hydroelectric dams does not require a Section 10 permit because it does not constitute work in navigable waters of the United States. A Section 404 permit is not required for this activity as long as there is no associated discharge of dredged or fill material. In these situations, most debris is removed with equipment or specially designed vessels that do not cause discharges of dredged or fill material into waters of the United States. Therefore, we are not proposing an NWP for this activity.

Another commenter requested that the terms and limitations of NWP 31 be expanded to include maintenance of intakes to water supply facilities.

The Corps is proposing to modify NWP 7 to authorize the removal of accumulated sediments from outfalls, intakes, and associated canals. All of the original terms and limitations of NWP 7 are retained in the proposed modification. Outfalls, intakes, and associated canals accumulate sediment and require periodic excavation or maintenance dredging to restore flow capacities to the facility. Most of the dredging is required in the vicinity of intake structures and their canals because circulation patterns result in the deposition of sediments in these areas. These sediments must be removed to ensure that the facility has an adequate supply of water for its operations. Water discharged from outfall structures usually has little or no sediment load; maintenance dredging is not often required in these areas. In situations where an utility company's intake or outfall canal is used by barges to travel to the utility facility, the proposed modification will allow continued access by those barges because the removal of accumulated sediments will return the intake or outfall canal to its designed dimensions, and restore its navigable capacity. Currently, utility companies must obtain individual permits for this work, since the amount of dredged material usually exceeds the limitation of 25 cubic yards specified in NWP 19. This NWP authorizes the removal of accumulated sediment from intake and outfall structures in small impoundments, such as water treatment facilities, irrigation ponds, and farm ponds. This NWP will not authorize the construction of new canals or the removal of sediments from the headworks of large dams, flood control facilities, or large reservoirs. These types of work may be authorized by individual permits, regional general permits, or other NWPs, such as NWPs 19 or 31.

A PCN will be required so that Corps districts can review these activities on a case-by-case basis to ensure that the adverse effects are minimal. The amount of sediment dredged or excavated must be the minimum necessary to restore the facility to original design capacities and configurations.

The Corps believes that the potential impacts from the removal of accumulated sediments from intake and outfall structures and associated canals will be minimal. If the canals are inhabited by submerged aquatic vegetation or other important aquatic organisms, the PCN requirement of this NWP will allow district engineers the opportunity to assert discretionary authority. In addition, regional or case-by-case special conditions such as time-of-year restrictions can be placed on specific activities or geographic areas.

12. Utility Activities

In response to the December 13, 1996, **Federal Register** notice, the Corps received several comments requesting development of NWPs for activities associated with utility lines, such as the construction of electric and pumping substations, foundations for electric power line towers, and permanent access roads. NWP 26 has been used to authorize these activities in the past. From May 1, 1997, through December 31, 1997, there were 34 utility-related activities authorized by NWP 26. Since the commenters were proposing activities directly related to utility lines, we believe it is more appropriate to modify NWP 12 to authorize these activities, instead of developing separate NWPs for each type of activity.

One commenter proposed an NWP that would authorize the installation and maintenance of overhead electric transmission lines and associated facilities, such as substations and permanent access roads. NWPs 26 and 33 have been used to construct access roads associated with utility lines, but NWP 33 authorizes only temporary access roads. Permanent access roads are necessary for routine and emergency maintenance of overhead electric transmission lines. NWP 26 has also been used to authorize the construction of foundations for transmission towers and poles. Another commenter has used NWP 26 to build electric substations and construct access roads for electric power transmission lines, and recommended either issuance of a new NWP or modification of NWP 12 to authorize these activities. The commenter stated that NWPs 14 and 33 typically cannot be used to authorize

the construction of permanent access roads for utility lines, because of the acreage limitations of NWP 14 and the fact that NWP 33 authorizes temporary, not permanent, access roads.

A commenter recommended including electric utility activities in the NWP program, similar to the utility activities presently authorized by the Florida Department of Environmental Protection and regional water management districts in the State of Florida.

Currently, NWP 12 authorizes only utility line backfill and bedding activities. All of the original terms and limitations of NWP 12 have been retained, with some clarification, in the proposed modification. The proposed modification of NWP 12 will include the following activities commonly associated with utility lines: electric and pumping substations, foundations for electric utility line towers, and permanent access roads. Modifying NWP 12 to expand coverage of the installation and maintenance of utility lines and attendant features is a more effective means of authorizing these activities than developing several new NWPs. It will streamline the authorization process for utility line activities that have minimal adverse effects on the environment.

Paragraph (i) of the proposed modification authorizes the same activities as the NWP 12 published in the December 13, 1996, **Federal Register** notice. In the proposed modification, we are including clarification of the circumstances where a pipeline carrying gaseous or liquid substances over navigable waters of the United States requires a permit from the United States Coast Guard pursuant to Section 9 of the Rivers and Harbors Act. We are also proposing to include language in this paragraph that states that repair of utility lines is authorized by this NWP. The impacts due to repair are often less than those of installation, because in most cases only certain sections of a utility line require repair, and these areas are restored upon completion of the work.

Paragraph (ii) authorizes discharges associated with the construction or expansion of electric or pumping substations, provided the discharge does not cause the loss of more than 1 acre of non-Section 10 waters of the United States (wetlands that are contiguous to Section 10 waters are also excluded). The Corps is proposing to require a PCN if the construction or expansion of the substation will cause the loss of more than ⅓ acre of waters of the United States.

Paragraph (iii) authorizes discharges for foundations of utility line towers, poles, and anchors. To minimize adverse effects, separate foundations for each tower leg will be required, when practicable, and the foundations must be the minimum size necessary. In most cases, the construction of foundations for overhead utility lines will have minimal adverse effects on the aquatic environment because these utility lines are constructed in a cleared right-of-way (which will remain as a wetland) and the foundations will permanently affect only a small proportion of the cleared wetland area. In the right-of-way, most of the vegetation will be allowed to grow back as either emergent or scrub-shrub wetland.

Paragraph (iv) would authorize discharges for the construction and maintenance of permanent access roads, which would be used to maintain the utility line, especially in emergency situations. Access roads used only for construction can be authorized by NWP 33, but restoration of waters of the United States is required after completion of the work. We expect that most access roads used for maintenance will be the same as the access roads used for construction. Access roads must be the minimum width necessary, be designed to minimize the amount of waters of the United States adversely affected by the roads, and cannot restrict surface and subsurface flows. We are proposing a maximum acreage loss limitation of 1 acre of waters of the United States. Access roads must follow preconstruction contours and elevations to the extent practicable. The Corps is proposing to require notification where more than 500 linear feet of access road is constructed above preconstruction grades in waters of the United States. Corduroy or geotextile/gravel access roads constructed at grade are likely to be the most common access roads constructed. We anticipate that most of these access roads would be 10 to 15 feet wide. We believe that permanent access roads are necessary because they allow efficient emergency maintenance of utility lines. Temporary access roads become overgrown with vegetation, delaying access for emergency repairs. Such delays endanger citizens serviced by the utility line. With proper construction techniques, access roads can be constructed and maintained with minimal adverse effects on the aquatic environment. Surface water flows will not be substantially affected by access roads constructed at-grade. Some components of access roads will have to be constructed above grade, particularly to construct culverted stream crossings. Such crossings will have minimal adverse effects, provided the culverts are adequately sized.

In the proposed modification of NWP 12, we are including the definition of ''loss'' of waters of the United States as defined in other NWPs. The installation of subaqueous utility lines in waters of the United States should not be considered as resulting in a loss of waters of the United States if the area impacted by the installation of the utility line is the minimum necessary and preconstruction contours and elevations are restored after construction. The use of timber mats in utility line construction results in temporary impacts to waters of the United States, and typically reduce impacts to wetlands caused by heavy equipment. Therefore, the use of timber mats should not be included as a source of permanent loss when determining impacts to waters of the United States, provided they are removed upon completion of construction. Once the timber mats are removed, wetland conditions typically return within a short time period.

We are also including language in the proposed modification of NWP 12 to clarify that the installation of utility lines in navigable waters of the United States without any associated discharge of dredged or fill material (i.e., Section 10 of the Rivers and Harbors Act is the only applicable law) is authorized by this NWP. All of the original notification provisions of NWP 12 will remain the same, with additional notification provisions for discharges for electric or pumping substations that result in the loss of more than ⅓ acre of non-tidal waters of the United States and for permanent access roads constructed in waters of the United States above preconstruction grades for a distance of more than 500 feet. We are revising item ''c'' in the notification section to clarify that the exclusion of overhead utility lines that are constructed for a distance of more than 500 linear feet in waters of the United States from the notification requirement.

This NWP does not authorize the construction of new power plants, water treatment plants, or reservoirs. Discharges in Section 10 waters for the construction of electric or pumping substations or access roads is not authorized. Pipelines used to transport gases and liquids over navigable waters of the United States require a Section 9 permit from the United States Coast Guard and are not authorized by this NWP. Division and district engineers will still be allowed the use of discretionary authority when very

sensitive/unique areas may be adversely affected by these activities.

14. Linear Transportation Crossings

One commenter recommended an NWP to authorize the construction, extension, and expansion of railroad tracks, including railroad beds. NWP 26 has been often used to authorize this type of work. Another commenter recommended an NWP to authorize minor road improvements and maintenance projects and the placement of drainage structures in headwater streams.

The Corps is proposing to modify NWP 14 to authorize discharges of dredged and fill material into non-tidal waters of the United States, excluding non-tidal wetlands contiguous to tidal waters, for the construction, expansion, and improvement of public linear transportation crossings for public projects such as roads, railroads and runways. For private linear transportation crossings and for public linear transportation crossings in tidal waters or non-tidal wetlands contiguous to tidal waters, such as a controlled-access road to an industrial site, or the construction of a private road leading to a residence, the original terms and limitations of NWP 14 will be retained.

The Corps is proposing two options for the acreage limit for public linear transportation crossings in paragraph (a). We are requesting comments on whether the acreage limit for public linear transportation crossing should be 1 acre or 2 acres. For public linear transportation crossings, notification will be required for discharges in special aquatic sites, including wetlands, or for all discharges that result in the loss of greater than ⅓ acre of waters of the United States. For private road crossings, the discharge cannot result in the loss of more than ⅓ acre of waters of the United States, or extend for a distance of more than 200 feet in waters of the United States. Notification will be required for all discharges in special aquatic sites, including wetlands, for private road crossings. Between May 1, 1997, and December 31, 1997, NWP 26 was used to authorize 953 transportation projects. These transportation projects resulted in the loss of approximately 278 acres of wetlands, and 56,442 linear feet of stream bed, with 1,036 acres of compensatory mitigation provided by permittees.

Features of the proposed work that are integral to the linear transportation project, such as interchanges, stormwater detention basins, rail spurs or water quality enhancement measures, may also be authorized by this permit. This proposed permit may not be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or hangars.

For large transportation projects that would have many potential crossings of jurisdictional areas, the Corps districts will determine on a case-by-case basis whether this permit may be used, or whether an individual permit may be required for the work. Corps districts may also exercise discretionary authority over any project that, in the determination of the District Engineer, has the potential to result in more than minimal impact on the aquatic environment. The definition of the term ''single and complete project'' for linear projects can be found at 33 CFR 330.2(i).

The Corps is soliciting comments on several issues related to this proposed permit, including the acreage limit, and the prohibition of the use of this permit for non-linear features associated with transportation projects.

27. Stream and Wetland Restoration Activities

The Corps is proposing to modify NWP 27 to add the restoration and enhancement of streams to the wetland and riparian enhancement authorized by the existing NWP 27. The modified permit would authorize projects that would enhance, restore or create structural habitat features, hydraulics, and vegetation in altered and/or degraded non-Section 10 streams and non-tidal wetlands. Such activities include, but are not limited to: the removal of accumulated sediments, the installation, removal and maintenance of water control structures, the installation of current deflectors, the enhancement, restoration or creation of riffle and pool stream structure, the placement of in-stream habitat structures, modifications of the stream bed and/or banks to restore or create stream meanders, the backfilling of artificial channels and drainage ditches, the removal of existing drainage practices and structures, the construction of small nesting islands, the construction of open water areas, and activities needed to re-establish vegetation, including plowing or discing for seed bed preparation and mechanized land-clearing to remove undesirable vegetation. This NWP applies to projects that would serve the purpose of restoring and enhancing ''natural'' stream hydrology, wetland hydrology, vegetation, and function in altered and degraded non-Section 10 streams and associated riparian areas, and non-tidal wetlands.

This NWP cannot be used to authorize activities for the conversion of natural wetlands or streams to another aquatic use, such as the impoundment of a stream for waterfowl habitat, or the conversion of a scrub-shrub wetland into an herbaceous emergent wetland. However, this permit may be used to authorize the construction of projects that would recreate similar habitat types in a different location than the existing wetlands, provided that the project results in functional gains. For example, a berm may be proposed to enhance and enlarge an existing wetland, however, the impoundment of water behind the berm would replace an existing emergent wetland area with open water, and recreate a similar emergent wetland at another location within the larger wetland. This project may be authorized by NWP 27, because it would not result in a conversion of one wetland type to a dissimilar wetland type.

No activities or discharges not directly related to the restoration of ecological values or aquatic functions may be authorized by this permit.

The intent of this permit is to facilitate the restoration of degraded or altered streams and wetlands. The goals of the proposed activities must be based upon the enhancement, restoration or creation of the characteristic ecological conditions that existed, or may have existed, in the stream or wetland prior to disturbance, or to other wise improve the aquatic functions of such areas. The activities may include, but are not limited to, the modification of the hydraulics, vegetation, or physical structure of the altered or degraded stream or wetland. Notification to the District Engineer would be required only for those projects noted in condition (iv) of the permit.

The use of this proposed permit with other NWPs would require notification to the District Engineer in accordance with General Condition 15. Use of this NWP with other NWPs may not be restricted, provided there is a net gain of aquatic habitat and/or aquatic functions. For example, it is likely that some projects considered under this permit would require cofferdams to temporarily dewater the project site, or interim bank stabilization measures during construction of channel improvements. Because neither of these discharges are, in and of themselves, directly related to the restoration of aquatic habitat, they would require separate authorizations, in these cases NWP 33 and NWP 13, respectively. Given the nature of the activities that may be proposed for each project site, the Corps will make a case-by-case determination on the need for other

authorizations during the review of the project.

For activities that require notification, the Corps, with input from other Federal and State agencies, would evaluate each project to determine whether the proposed work would result in a net increase in aquatic functions. Factors such as temporal habitat loss, changes in species composition, and other aquatic functions would be examined in the course of the evaluation. This permit cannot be used to relocate an altered or degraded stream, where the new stream would have characteristics similar to the old stream (i.e., substantial habitat improvement would not result from the work). In another example, this permit would not be applicable to a project that proposed to remove sediment from a stream for the purpose of improving or creating a navigation channel, because the primary purpose of the work would not be the improvement of aquatic functions, although in some cases, some habitat benefits could result from the work. Similarly, this permit may not be used to channelize, deepen or modify a stream in order to facilitate land drainage.

The Corps is soliciting comments on the types of activities that may be authorized under this proposed permit, and whether any additional conditions (e.g., restricting the construction of the projects to certain types of streams) should be placed upon its use. The Corps anticipates that the majority of projects authorized by this permit would involve habitat improvements on small lengths of streams or in small wetland areas; however, there is no restriction on the scope of the projects that can be authorized with this permit. The Corps anticipates that this permit will be used primarily by units of State and local government, private ecological restoration groups and individual landowners.

40. Agricultural Activities

The Corps is proposing to modify NWP 40 to authorize the discharge of dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands, for the purpose of improving production on existing agricultural lands. Between May 1, 1997, and December 31, 1997, NWP 26 was used to authorize 317 agricultural projects. These projects resulted in the loss of approximately 85 acres of wetlands and 20,860 linear feet of stream bed, with 151 acres of compensatory mitigation provided by the permittees. The proposed modification to NWP 40 may be used to authorize, in addition to the construction of foundations and building pads for farm buildings currently authorized by NWP 40, the installation or placement of drainage tiles; construction of drainage ditches or levees; mechanized land clearing, land leveling, and similar activities.

Paragraph (a) of the proposed modification of NWP 40 authorizes discharges into waters of the United States, provided the permittee has obtained a minimal effect exemption from NRCS and the activity does not cause the loss of greater than 1 acre of non-tidal wetlands and does not cause the loss of greater than ⅓ acre of playas, prairie potholes, and vernal pools. The minimal effect exemption must be obtained in accordance with the provisions of the Food Security Act (16 U.S.C. 3801 *et seq.*) and the National Food Security Act Manual(NFSAM).

Paragraph (b) of the proposed modification authorizes discharges of dredged or fill material into non-tidal wetlands on agricultural lands provided the discharge results in a loss of no greater than 3 acres of non-tidal wetlands and the permittee submits and implements a compensatory mitigation plan that fully offsets the wetlands loss. The Corps is considering options for the type of wetlands that should be applicable to this activity and is seeking comments on whether this proposed modification should be for all non-tidal wetlands, farmed wetlands only, or frequently cropped wetlands only. Farmed wetlands and frequently cropped wetlands are those wetlands which are already being manipulated to some extent for agricultural production. Non-tidal wetlands include farmed wetlands and frequently cropped wetlands in addition to those natural wetland areas on agricultural land that have not been previously manipulated for agricultural production.

The Corps is also considering and seeking comments on options to establish acreage limits for these activities. One option would be to establish a sliding scale or indexing of impact acreage limits for this NWP, based on farm size. Another option is using a simple upper impact acreage limit (e.g., 3 acres). A sliding scale could be based on the size of a farm, percentage of wetlands, percentage of farm, or other approaches. The following table is a sample sliding scale or indexing of impact acreage limits for this NWP, based on farm size:

Farm Size	Maximum acreage loss authorized for wetlands on agricultural lands
Less than 15 acres	¼ acre.
15–25 acres	½ acre.
25–50 acres	¾ acre.
50–100 acres	1 acre.
100–500 acres	2 acres.
Greater than 500 acres	3 acres.

NRCS must approve the mitigation plan if the permittee is a USDA program participant or non-participant receiving technical assistance. If the permittee is a USDA non-participant and has not had NRCS approve a mitigation plan, the Corps must approve the mitigation plan. Discharges into natural playas, prairie potholes, or vernal pools are not authorized under the terms of this paragraph.

Paragraph (c) of the proposed modification to NWP 40 authorizes discharges into naturally vegetated playas, prairie potholes, or vernal pools, provided the discharge does not result in the loss of greater than 1 acre of non-tidal wetlands. The Corps is also considering and seeking comments on options to establish acreage limits for these activities. One option would be to establish a sliding scale or indexing of impact acreage limits for this NWP, based on farm size. Another option is using a simple upper impact acreage limit (e.g., 1 acre). A sliding scale could be based on size of farm, percentage of wetlands, percentage of farm, or other approaches. The following table is a sample sliding scale or indexing of impact acreage limits for this NWP, based on farm size:

Farm size	Maximum acreage loss authorized for playas, prairie potholes, and vernal pools
Less than 25 acres	¼ acre.
25—100 acres	½ acre.
100—500 acres	¾ acre.
Greater than 500 acres	1 acre.

The permittee must submit an NRCS- or Corps-approved compensatory mitigation plan to fully offset wetland losses. The compensatory mitigation plan must be approved by NRCS if the permittee is a USDA program participant or non-participant receiving technical assistance. The Corps must approve the mitigation plan if the permittee is not a USDA program

participant and has not had NRCS approve a mitigation plan.

Paragraph (d) of the proposed modification contains the original terms of NWP 40. The acreage limit for this paragraph is 1 acre of non-tidal wetlands in agricultural production prior to December 23, 1985. This NWP does not authorize discharges into playas, prairie potholes, and vernal pools for the construction of building pads or foundations for farm buildings.

In paragraph (e), the Corps is also proposing to modify NWP 40 to authorize the relocation of existing serviceable drainage ditches and previously substantially manipulated intermittent and small perennial streams on agricultural land. However, the relocation of ditches and streams authorized by this NWP does not authorize reconfiguration of those ditches or streams to increase the area drained by the ditch or stream (i.e., by widening or deepening the ditch/stream beyond its original design dimensions or configuration). This NWP does not authorize work in streams other than described above.

The Corps is proposing to require notification for activities that result in: (1) the loss of greater than ⅓ acre of non-tidal waters of the United States, including playas, prairie potholes, or vernal pools, or (2) filling or excavating greater than 500 linear feet of drainage ditches and previously substantially modified intermittent and small perennial streams. The appropriate Federal and State agencies will be notified for the loss of greater than 1 acre of non-tidal wetlands.

The aggregate acreage limit for wetland impacts authorized by this NWP as a result of the activities in paragraphs (a), (b), (c), and (d) cannot exceed 3 acres per farm for the duration of this nationwide permit (i.e., until reissuance or any revocation). NWPs are generally reissued every five years. When NWPs are reissued they may be used again on the same farm to authorize activities for impacts not to exceed the acreage thresholds authorized in the reissuance. In addition, for the purposes of increasing agricultural production, this NWP cannot be used with other NWPs to exceed this 3-acre limit. The use of this NWP prohibits any future use of proposed NWP A, whether by the farm owner/operator or if the property is sold. For the purposes of this NWP a single and complete project is defined as a ''farm'' (i.e., the land unit under one ownership, which is operated as a farm, as reported to the Internal Revenue Service). We are considering options for and requesting comments on alternative suggestions for this definition of a single and complete project (such as ''farm tract'' or ''field''). The boundary determination of the single and complete project as defined for this NWP will be as determined as of the effective date of the publication of this **Federal Register** notice.

The notification will allow district engineers to review proposed activities to ensure that no more than minimal adverse effects to aquatic resources will occur. District engineers can require special conditions on a case-by-case basis to ensure that the impacts are minimal. District engineers can exercise discretionary authority and require an individual permit for those activities that may have more than minimal adverse effects on the aquatic environment.

Other Suggested NWPs

In response to the December 13, 1996, **Federal Register** notice, several commenters recommended replacement NWPs for activities which we believe do not warrant the development of a NWP. Some of these activities are in areas that are not considered to be waters of the United States. Other activities are exempt from permit requirements of Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. These comments are addressed below.

Maintenance of Landfill Surfaces: One commenter proposed an NWP authorizing the maintenance of landfill surfaces. The Resource Conservation and Recovery Act (RCRA) requires the use of clay material to cap municipal solid waste landfills, and grading of such areas sufficient to prevent water from ponding on the cap. As refuse in a landfill decomposes and settles, portions of the clay cap can subside, creating ponded areas on the landfill surface. Wetland species may colonize these ponded areas. These depressions increase the chance that water may infiltrate through the clay cap and come into contact with the refuse, which may result in increased pollution of the air and groundwater. To comply with the RCRA, Clean Air Act, and Clean Water Act, these depressions must be filled to return the landfill cap to the designed grade and prevent infiltration of water into the landfill. The regular maintenance of landfill caps prevents leaching of contaminants into the surrounding air, water, and soil.

The Corps believes that these ponded areas on the landfill cap are not waters of the United States, because landfill caps are constructed from uplands and require continuous maintenance. The preamble to 33 CFR Part 328 in the November 13, 1986, **Federal Register** (51 FR 41217, Section 328.3) states that ''water filled depressions created in dry land incidental to construction activity * * *'' are not considered waters of the United States ''* * * until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States.'' The landfill is not abandoned because of the routine maintenance required by law to keep the landfill surface at the designed grade. Since routine maintenance of landfill surfaces does not require a Section 404 permit, we will not be developing an NWP for this activity.

Maintenance and Filling of Ditches Adjacent to Roads and Railways: One commenter proposed an NWP to authorize maintenance of roadside ditches constructed in tidal and non-tidal waters of the United States to collect and convey runoff from the road. Another commenter proposed an NWP to authorize discharges of dredged or fill material to construct additional railroad tracks, widen or protect railroad beds, and drain water to prevent saturation of the railroad bed. Saturation of the railroad bed can cause settling of the bed, requiring maintenance or reconstruction to return the railroad bed to the proper grade. Flat-bottom ditches are constructed at the toe of the railroad embankment (often in upland areas) to convey runoff from the railway to natural drainage courses. Roadside and railway ditches commonly develop wetland characteristics as a result of fulfilling their purpose and must be periodically cleaned out. At other times, these drainage ditches may be filled to widen the road or railroad bed. Work in roadside or railroad ditches may or may not require a permit from the Corps, depending on the case-specific circumstances of the ditch.

The maintenance of roadside or railroad drainage ditches constructed in uplands does not require a Section 404 permit since these ditches are not waters of the United States, even though they may support wetland vegetation. The preamble to 33 CFR 328.3, as published in the November 13, 1986, issue of the **Federal Register** (51 FR 41217), states that ''non-tidal drainage or irrigation ditches excavated on dry land'' are generally not considered to be waters of the United States. Filling these ditches to widen the road or railroad bed does not require a Section 404 permit.

If these roadside or railroad ditches are constructed in waters of the United States, the maintenance of these ditches is exempt from Section 404 permit requirements (see 33 CFR 323.4(a)(3)),

provided the ditch is restored to its original dimensions and configuration. However, the construction of these ditches in waters of the United States requires a Section 404 permit and may be authorized by an individual permit, an NWP or a regional general permit. A Corps permit is required to widen the road or railroad bed in these ditches constructed in waters of the United States, if the activity results in a discharge of dredged or fill material into waters of the United States or the activity extends into navigable waters of the United States. We are proposing to modify NWP 14 to authorize such activities, and other linear transportation activities, in non-tidal waters of the United States (wetlands that are contiguous to tidal areas are also excluded). Widening road or railroad beds in tidal waters usually requires an individual permit, but may be authorized by an NWP, or an applicable regional general permit. The construction or maintenance of roadside and railroad ditches in navigable waters of the United States requires a Section 10 permit. Furthermore, the maintenance of roadside ditches where the proposal includes reconfiguration of these ditches does not qualify for the exemption at 33 CFR 323.4(a)(3). However, we have proposed NWP F in order to address this situation, provided the drainage capacity of the ditch is not increased.

Maintenance of Water Treatment Facilities: One commenter requested an activity-specific NWP for maintenance of water treatment facilities, such as the removal of material from constructed settling lagoons and associated constructed wetlands, maintenance and de-watering of stock ponds for livestock, and maintenance of recharge ponds for water supplies.

Water treatment facilities constructed in uplands do not require a Section 404 permit for maintenance activities. The Corps does not generally consider ''[a]rtificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing'' to be waters of the United States. (Refer to the preamble to 33 CFR 328.3, as published in the November 13, 1986, issue of the **Federal Register** (51 FR 41217)).

To address some other issues relevant to water quality, we are proposing NWP C for the construction and maintenance of stormwater management facilities, modifying NWP 3 to authorize the removal of sediments that accumulate in the vicinity of structures, and modifying NWP 7 to authorize removal of accumulated sediments from outfall and intake structures and associated canals. Removal of sediments from detention and settling basins constructed with a Section 404 permit would be authorized by the proposed NWP C as long as the maintenance activity does not change the use of the facility. In addition, some of the activities cited above are covered by existing NWPs, are exempt from Clean Water Act regulation, or do not require a Corps permit. Construction of stock ponds is an exempt activity; thus, the de-watering and maintenance of stock ponds is exempt from 404 Section permit requirements as long as the activity is for water quality benefits and does not enlarge the pond or change the use to other than providing water for livestock. Maintenance of recharge ponds constructed in uplands does not require a Section 404 permit, but the maintenance of these ponds constructed in waters of the United States may be authorized by existing NWPs, such as NWPs 3, 18, or 13, or proposed NWP C. Therefore, these activities have not been specifically included in the proposed NWPs.

Mitigation Banks and the NWP Program. One commenter recommended that the replacement NWPs should include language that identifies mitigation banks as the preferred method of providing compensatory mitigation for impacts authorized by these NWPs. The commenter believes that placing such an emphasis on mitigation banking will provide incentive for the construction of more mitigation banks by increasing the certainty that these banks will be used by permittees to offset losses authorized by these NWPs. This commenter also recommended that the NWP program formally adopt the ''Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks'' (60 FR 58605–58614). The commenter also recommended the development and implementation of standard policies pertaining to the establishment and use of in lieu fee programs that matches the federal mitigation bank guidance. The commenter believes such guidance is needed to monitor the funds paid by permittees, monitor the number of acres of wetlands restored as a result of payment of those fees, provide compensatory mitigation in advance of authorized impacts, and require binding agreements that will ensure that the compensatory mitigation is successful.

The Corps disagrees that the proposed replacement NWPs should stipulate preference for mitigation banks as a form of compensatory mitigation. In the December 13, 1996, **Federal Register** notice, the Corps did not direct districts to require permittees to use mitigation banks for offsetting wetland losses due to NWP 26, but suggested that they could be used, as could in lieu fee programs and individual mitigation projects, to provide compensatory mitigation. Consolidated mitigation methods (mitigation banks, in-lieu fees) are often an efficient means of compensating for impacts, and may confer benefits to the aquatic environment as well (see 61 FR 65892). We recognize that consolidated mitigation projects, such as mitigation banks and in lieu fee programs, are more practicable and successful because of the planning and implementation efforts typically expended on these projects by their proponents. In contrast, many individual efforts to create, restore, or enhance wetlands to replace small wetland impacts are often not successful and do not provide many benefits to the aquatic environment, partly because they are not well planned or executed. In addition, numerous small compensatory mitigation efforts can be expensive and time-consuming to monitor.

Mitigation banks and in lieu fee programs are not common throughout the country. Therefore, it would be impractical to require their use as a preferred or sole means of providing compensatory mitigation for impacts authorized by the proposed replacement NWPs. While in lieu fee programs are in place in several districts, efforts continue to ensure in lieu fee programs will provide adequate compensatory mitigation. District engineers have the authority to approve the means by which a particular permittee provides appropriate compensatory mitigation. Permittees should not be required to use a particular mitigation method, just because it is available. Permittees must have the flexibility to propose compensatory mitigation methods that are within their means to accomplish. To the extent appropriate, permittees should consider use of approved mitigation banks and other forms of mitigation including in lieu fees. District engineers will evaluate the permittee's proposed mitigation for its appropriateness and practicability as indicated in the NWP mitigation condition.

Expansion of Nationwide Permit 31. A commenter requested that NWP 31 be expanded to authorize other maintenance activities relating to flood control and maintenance of water supply facilities, including removing sediment from natural stream channels without enlarging the channel, removing vegetation from streams that increases aggradation of the stream bed,

stabilizing banks, removing aggraded sediments, and cleaning sediment from intake pipes that draw water from the stream or groundwater. The commenter stated that some of these activities did not require a Section 404 permit prior to the implementation of the excavation rule and are not authorized by NWP 31 or 33 CFR 330.3.

NWP 31 authorizes discharges of dredged or fill material for the maintenance of existing flood control facilities that were either previously authorized by a Corps permit or 33 CFR 330.3 or constructed by the Corps and transferred to a local sponsor for operation and maintenance. In natural stream channels, most of the activities cited in the previous paragraph can be authorized by NWP 31 provided those channels are part of an authorized flood control facility. One requirement of NWP 31 is that the District Engineer establish a baseline for maintenance. The maintenance baseline can include width at ordinary high water, channel depth, and/or other parameters used to quantify dimensions of a stream channel. For example, the maintenance baseline for a stream channel may a particular bed elevation. When sediments accumulate in the stream channel, raising the elevation of the bed, NWP 31 may be used to authorize the removal of the aggraded sediments to return the stream bed to the maintenance baseline elevation, even if the sediment supports wetland vegetation. Bank stabilization work for portions of the flood control project may be authorized by NWP 13, regional general permits, or an individual permit. The removal of sediment from water intake pipes cannot be authorized by NWP 31. However, removal of sediments from the vicinity of these structures may be authorized by NWP 18, the proposed modifications to NWP 3, the proposed modification to NWP 7, regional general permits, or individual permits.

Discussion of Nationwide Permit Conditions

General Conditions

The Corps is proposing to consolidate all of the General Conditions and Section 404 Only conditions into one General Condition Section for the NWPs. The reason for this consolidation is that most of the Section 404 Only conditions have applicability to activities in Section 10 waters. Some of the Section 404 Only conditions, such as conditions 4, 5, 6, and 8, are essentially always applicable to work in navigable waters of the United States. For example, 33 CFR 320.4(r) states that mitigation is an important aspect of the review and balancing process on many Department of the Army permit applications. The Corps policy at 33 CFR 320.4(r) on mitigation applies to all types of decisions, including Section 10 permits. Some of the Section 404 only conditions still generally apply only to Section 404 activities, but in an effort to simplify the general conditions for the NWPs, the Corps is proposing to combine all conditions into one section. This consolidation does not increase the scope of analysis for determining if a particular project qualifies for an NWP; the District Engineer must still use discretion to determine if a particular condition applies to a particular activity. We are proposing to modify the opening language of Section 404 only conditions 1, 2, 3, 4, 5, 7, and 8 to ''activity [or activities], including structures and work in navigable waters of the United States and discharges of dredged or fill material,'' to reflect that broader application. The three modified conditions (general conditions 9 and 13 and Section 404 only condition 6) and the modified Section 404 only conditions would apply to all the existing NWPs as well as the new NWPs that are issued.

The following is a discussion of our reasons for proposing changes to 6 existing NWP conditions and adding one new NWP general condition. If an existing NWP condition is not discussed below, no changes to that condition are proposed, other than those changes cited in the previous paragraph.

9. Water Quality. We are proposing to change the name of this condition from ''Water Quality Certification'' to ''Water Quality'' and modify this condition to require, for NWPs 12, 14, 17, 18, 21, 32, 40, A, B, C, D, and E, a water quality management plan, if it is not required as part of the 401 certification. This requirement only applies to those projects for which a water quality management plan would help keep the adverse effects on the aquatic environment minimal, such as prevention of more than minimal degradation of downstream water quality by maintaining a vegetated buffer adjacent to open water bodies such as lakes and streams. The requirement of implementation of a water quality management plan is not intended to apply to projects where the impacts to the aquatic environment are minimal, such as the construction of a small road crossing to provide access to an upland development where the impacts to waters of the United States regulated by the Corps (i.e., NWP 14 in this example) are limited to a small proportion of the project area. The requirement for a water quality management plan is also not intended to increase the scope of analysis of the Corps review. The water quality management plan must implement methods and technologies to reduce direct and/or indirect degradation of water quality as a result of the permitted work. Practices such as vegetated buffers adjacent to open waters, sediment traps and barriers, sediment detention basins and ponds, infiltration trenches, and nutrient management techniques can be used to reduce degradation of water quality due to adjacent land use.

13. Notification. We are proposing to require notification to the District Engineer for all of the proposed NWPs, based on varying thresholds, generally ⅓ of an acre of impact. Because the Corps has added so many NWPs with a PCN requirement, the PCN process must be applied in a simple and consistent manner. Therefore, for discharges causing the loss of greater than 1 acre of waters of the United States, the notification will be sent to the appropriate Federal and State agencies in accordance with paragraph (e) of General Condition 13. For other activities requiring notification to the District Engineer, the PCN will be subject to Corps-only review. The PCN will be subject to a 30-day review period, from the date of receipt of a complete PCN by the District Engineer. Corps district personnel will utilize the PCN to assess the environmental impacts of the proposed work and can recommend appropriate actions, such as special conditions or compensatory mitigation, to ensure that impacts are minimal.

16. Subdivisions. The Corps is including a condition in the proposed NWPs similar to the ''subdivision clause'' of NWP 26, which prohibited the use of NWP 26 for real estate subdivisions created after October 5, 1984, where new discharges of dredged or fill material into waters of the United States in said subdivision would cause the upper acreage limit of NWP 26 to be exceeded. The Corps is proposing to include a similar clause for NWPs A and B. The purpose of this condition is to prevent the division of property as a means of getting around the acreage limits of NWPs A and B. The subdivision clause would state that the cumulative upper limit for a subdivision seeking authorization under NWP A would be 3 acres for a single and complete project, and that the cumulative upper limit for subdivisions seeking to use NWP B would be 10 acres for a single and complete. The term ''single and complete'' means if, upon

authorization, any given project can be constructed, independent of any reliance on *subsequent* Corps of Engineers authorization for additional regulated activities (i.e., activities following those under current authorization consideration). In other words, a project may be considered single and complete if it has independent utility.

19. Suitable material. The Corps is proposing to modify this general condition by inserting the words ''* * * used for construction or * * *'' between ''material'' and ''discharged.'' This change was made to ensure that materials used for structures or work in navigable waters of the United States are made of suitable materials.

20. Mitigation. We are proposing to delete the words ''* * * unless the District Engineer approves a compensation plan that the District Engineer determines is more beneficial to the environment than on-site minimization or avoidance measures.'' from this condition. This condition will be modified to require restoration, creation, enhancement, or preservation of aquatic resources to offset losses of functions and values due to authorized impacts. This condition also stresses the importance of including upland or wetland vegetated buffers adjacent to open water areas as an important component of any mitigation plan.

21. Spawning areas. The Corps is proposing to add a sentence to this condition to prohibit activities that fill or excavate important spawning areas.

22. Management of Water Flows. We are proposing to change the title of this condition from ''Obstruction of High Flows'' to ''Management of Water Flows'' and modifying it to require that permittees design their projects to maintain preconstruction downstream flow conditions. The permittee must, to the extent practicable, maintain the flow rates from the site as close as is feasible to preconstruction levels to minimize the potential for adverse effects to aquatic organisms and sediment transport in the stream. The removal of vegetation, and the increase in the percentage of impervious surfaces on a project site can increase runoff flows from the site, which can result in downcutting of stream beds and degradation of aquatic habitat. This condition also requires that projects be designed to reduce upstream impacts such as flooding or draining, unless the primary purpose of the project is to impound water or reestablish drainage.

Definitions

To provide for consistency in the implementation of the proposed NWPs, the Corps is proposing to include definitions for some terms used in these NWPs. The definitions are located in Section E of this notice. The Corps is seeking comments on these definitions.

Nationwide Permit 29 for Single Family Housing

On July 15, 1996, a lawsuit was filed by several organizations against the Corps, challenging the issuance of NWP 29 under Section 404 of the Clean Water Act (CWA). The plaintiffs challenged the issuance of NWP 29 because they believe that: (1) the Corps violated the CWA by issuing an NWP for activities that result in more than minimal adverse environmental effects; (2) the Corps violated the CWA by issuing an NWP for activities that are not similar in nature; (3) the Corps violated the procedural requirements of the Section 404(b)(1) Guidelines of the CWA; (4) the Corps violated the Endangered Species Act (ESA) by failing to consult with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS); (5) the Corps violated the Fish and Wildlife Coordination Act by failing to consult with the FWS and NMFS; (6) the Corps violated the National Environmental Policy Act (NEPA) by failing to prepare an Environmental Impact Statement (EIS); and (7) the issuance of NWP 29 was arbitrary, capricious, and an abuse of discretion. After the Corps reissued NWP 29 on December 13, 1996, a supplemental complaint was filed by the plaintiffs challenging the reissuance of NWP 29.

On April 30, 1998, a court order was issued by the United States District Court, District of Alaska, remanding the Secretary of the Army to consider excluding high value waters from NWP 29, consider the use of lower acreage limits for NWP 29, and to set forth those considerations in an amended environmental assessment (EA). The court determined that the EA issued on December 10, 1996, inadequately addressed the exclusion of high value waters and lower acreage limits for NWP 29. Pending the Secretary of the Army's consideration of these issues, the court enjoined the Corps from accepting any preconstruction notifications for NWP 29 after June 30, 1998, unless the court orders otherwise. The court did not address the other issues raised by the plaintiffs because actions undertaken by the Corps as a result of the remand may have significant impacts on the resolution of the other arguments. It should be noted that the Corps is already undergoing ESA consultation for NWP 29, which should be concluded this summer.

NWP 29 authorizes single family housing activities that have minimal adverse effects, both individually and cumulatively, on the aquatic environment. For this NWP, the Corps has several mechanisms to protect high value waters and wetlands. All activities authorized under NWP 29 require preconstruction notification to the Corps. The preconstruction notification allows district engineers to review each proposed activity to determine if it will result in minimal adverse environmental effects, and if necessary, take measures such as adding special conditions to the NWP authorization to further minimize the adverse effects of the activity. Special conditions may require compensatory mitigation to offset losses of aquatic resource functions and values. If the proposed work will result in more than minimal adverse environmental effects, then the District Engineer will exercise discretionary authority to require an individual permit, with the requisite alternatives analysis and public interest review. District engineers can protect high value waters and endangered species by regionally conditioning NWP 29. Regional conditioning may exclude the use of NWP 29 from certain waters, such as non-tidal wetlands contiguous to tidal waters, lower the acreage limit, or exclude the use of NWP 29 in areas where endangered species or their critical habitat is known to occur. The regional conditioning process is discussed elsewhere in this notice.

Corps districts have been collecting data on the use of NWP 29 since 1995. Districts have been monitoring the use of NWP 29 by tracking the number of NWP 29 verifications, the number of PCNs where discretionary authority was exercised to require individual permits for the proposed activity, the proposed acreage of impacts, the authorized acreage of impacts, and the acreage of compensatory mitigation offered and accepted for NWP 29 authorizations.

During Fiscal Year 1996, NWP 29 was used 333 times to authorize the construction of single family residences and attendant features. Discretionary authority was exercised for 9 PCNs to review the proposed work under the individual permit process. During 1996, applicants proposed to fill 101.8 acres of non-tidal waters of the United States, but were authorized to fill only 62.7 acres. The acreage of compensatory mitigation offered and accepted during this time period was 2.3 acres. The average loss of waters of the United States per NWP 29 authorization was 0.19 acres.

During Fiscal Year 1997, NWP 29 was used 188 times. The Corps asserted

discretionary authority and required individual permit review for two requests for NWP 29 authorization. During this time period, applicants proposed to fill 30.5 acres of non-tidal waters of the United States, but were authorized to fill 28.1 acres of waters of the United States. The acreage of compensatory mitigation offered and accepted during this time period was 11.3 acres. During 1997, the average loss of waters of the United States per NWP 29 authorization was 0.15 acres.

Corps districts are also monitoring cumulative impacts to ensure compliance with the CWA. Corps districts generally monitor regulated activities on a watershed basis to ensure that the activities authorized by NWP 29 and other Corps permits do not result in more than minimal cumulative adverse effects on the aquatic environment in a particular watershed. Division engineers can revoke NWP 29 in high value aquatic environments or in specific geographic areas (e.g., watersheds), if they believe that the use of NWP 29 in these areas will result in more than minimal individual and/or cumulative adverse environmental effects to the aquatic environment.

In accordance with the court order, we have prepared a revised EA for NWP 29. The revised EA includes a Section 404(b)(1) Guidelines compliance review and a Finding of No Significant Impact (FONSI). The revised EA also discusses how high value waters are protected under the NWP and the consideration of lower acreage limits for NWP 29. Copies of the revised EA and FONSI are available at the office of the Chief of Engineers, at each District office, and on the Corps home page at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/. Based on these analyses, the Corps has determined that the issuance of NWP 29 complies with the requirements for issuance under general permit authority.

During the comment period for the proposed reissuance of NWP 29, the Corps considered different acreage limits for this NWP. Several commenters recommended that the acreage limit be reduced to 1/10 acre. A few other commenters recommended an acreage limit of 1/4 acre. As discussed previously in this notice, the average acreage impact authorized by NWP 29 was 0.19 acre and 0.15 acre during fiscal years 1996 and 1997, respectively. The average acreage impact requested by applicants was 0.31 acre in 1996 and 0.16 acre in 1997. During their review of PCNs for NWP 29 authorization, district engineers required additional avoidance and minimization to ensure that the authorized impacts were minimal. Although NWP 29 has an acreage limit of 1/2 acre, few projects were authorized with that amount of impact. District engineers require avoidance and minimization during the PCN process to ensure minimal adverse environmental impacts due to the work. A higher acreage limit, although it may be rarely used, provides district engineers with the flexibility to authorize projects that have minimal adverse effects under NWP 29, even though they may adversely affect a somewhat larger area of low-value wetlands. As a result, the Corps considered decreasing the acreage limit of this NWP and determined that lower acreage limits are not necessary in terms of environmental effects or the workload that would be required to process requests for higher acreage impacts through the individual permit process.

To provide further assurance that NWP 29 authorizes only single family housing activities that have minimal adverse environmental effects, the Corps is now proposing to modify the acreage limit for NWP 29 to 1/4 acre. The public is invited to provide comments on the proposed modification to the acreage limit for NWP 29 within 60 days of the date of this notice. The Corps is not requesting comments on the other terms of NWP 29. In the interim, the Corps is suspending NWP 29 for activities that result in the loss of greater than 1/4 acre of non-tidal waters of the United States.

It is unlikely that the suspension or modification of NWP 29 will result in a substantial burden on the regulated public, since the average NWP 29 authorization in 1996 and 1997 resulted in the loss of 0.19 acre of non-tidal waters of the United States. Most small landowners can design their single family residences to comply with this new acreage limit for NWP 29. If not, then they can request authorization through the individual permit process or by a regional general permit, if available.

Therefore, from the date of this notice until the Corps has determined whether or not to modify NWP 29, NWP 29 can be used to authorize discharges of dredged or fill material to construct single family housing, including attendant features, provided the discharge does not result in the loss of greater than 1/4 acre of non-tidal waters of the United States, including non-tidal wetlands. All other terms and limitations for NWP 29, as published in the December 13, 1996, issue of the **Federal Register**, remain in effect. Discharges for single family housing activities that result in the loss of greater than 1/4 acre of non-tidal waters of the United States, including non-tidal wetlands, will be processed either under the individual permit process or by regional general permits. For information purposes, the text of the proposed modification of NWP 29 is as follows:

29. Single-Family Housing. Discharges of dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an individual permittee provided that the activity meets all of the following criteria:

a. The discharge does not cause the loss of more than 1/4 acre of non-tidal waters of the United States, including non-tidal wetlands;

b. The permittee notifies the District Engineer in accordance with the ''Notification'' general condition;

c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of 1/4 acre for the entire subdivision;

e. An individual may use this NWP only for a single-family home for a personal residence;

f. This NWP may be used only once per parcel;

g. This NWP may not be used in conjunction with NWP 14, NWP 18, or NWP 26, for any parcel; and,

h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the United States includes the filled area previously permitted, the proposed filled area, and any other waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Whenever any other NWP is used in conjunction with this NWP, the total acreage of impacts to waters of the United States of all NWPs combined, can not exceed 1/4 acre. This NWP authorizes activities only by individuals; for this purpose, the term ''individual'' refers to a natural person and/or a married couple, but does not include a corporation,

partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as ''the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership''. (Sections 10 and 404)

Authority

Accordingly, we are proposing to issue new NWPs, modify existing NWPs, and add conditions and to add NWP definitions under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*).

Dated: June 23, 1998.

Approved:

Russell L. Fuhrman,

Major General, U.S. Army, Director of Civil Works.

Nationwide Permits, Conditions, Further Information, and Definitions

A. Index of Nationwide Permits, Conditions, Further Information, and Definitions

Proposed New Nationwide Permits

A. Residential, Commercial, and Institutional Activities
B. Master Planned Development Activities
C. Stormwater Management Facilities
D. Passive Recreational Facilities
E. Mining Activities
F. Reshaping Existing Drainage Ditches

Nationwide Permits Proposed To Be Modified

3. Maintenance
7. Outfall Structures and Maintenance
12. Utility Activities
14. Linear Transportation Crossings
27. Stream and Wetland Restoration Activities
40. Agricultural Activities

Nationwide Permit Conditions

General Conditions

1. Navigation
2. Proper Maintenance
3. Soil Erosion and Sediment Controls
4. Aquatic Life Movements
5. Equipment
6. Regional and Case-by-Case Conditions
7. Wild and Scenic Rivers
8. Tribal Rights
9. Water Quality*
10. Coastal Zone Management
11. Endangered Species
12. Historic Properties
13. Notification*
14. Compliance Certification
15. Multiple Use of Nationwide Permits
16. Subdivisions*
17. Water Supply Intakes
18. Shellfish Production
19. Suitable Material*
20. Mitigation*
21. Spawning Areas*
22. Management of Water Flows*
23. Adverse Effects from Impoundments
24. Waterfowl Breeding Areas
25. Removal of Temporary Fills

(* Indicates conditions proposed to be changed.)

Further Information

Definitions

1. Aquatic Bench
2. Best Management Practices
3. Channelized stream
4. Contiguous wetland
5. Drainage ditch
6. Ephemeral stream
7. Farm
8. Intermittent stream
9. Loss of waters of the United States
10. Noncontiguous wetland
11. Non-tidal wetland
12. Perennial stream
13. Riffle and pool complexes
14. Stormwater management
15. Stormwater management facilities
16. Tidal wetland
17. Vegetated shallows
18. Waterbody

B. Nationwide Permits

A. Residential, Commercial, and Institutional Activities

Discharges into non-tidal waters of the United States, excluding non-tidal wetlands contiguous to tidal waters, associated with residential, commercial, and institutional development activities. Residential developments (multiple and single unit development for other than the personal residence of the permittee), commercial developments (such as retail stores, industrial parks, restaurants, business parks, shopping centers, and commercial recreational activities) and institutional developments (such as schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals and places of worship), are authorized, and may include activities such as: grading, rechannelization, expansion of an existing development, building pads, soil erosion and sediment control measures, and infrastructure such as utilities, roads, driveways, sidewalks, and recreation activities associated with the development, including activities such as playgrounds, ball fields, golf courses, nature trails, etc., provided that the activity meets all of the following criteria:

a. The discharge does not cause the loss of greater than 3 acres of non-tidal waters of the United States, using an index of impact acreage as follows*:

Parcel size	Maximum acreage loss authorized
Less than 5 acres	1/4 acre.
5–10 acres	1/2 acre.
10–15 acres	1 acre.
15–100 acres	2 acres.
Greater than 100 acres	3 acres.

b. For discharges causing the loss of greater than 1/3 acre of non-tidal waters of the United States, including non-tidal wetlands, the permittee notifies the District Engineer in accordance with the ''Notification'' general condition;

c. For activities that involve excavation and/or filling of open waters, including perennial or intermittent waterways, below the ordinary high water mark, the permittee notifies the District Engineer in accordance with the ''Notification'' general condition;

d. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the United States and avoidance or additional minimization cannot be achieved;

g. For discharges requiring notification the permittee must submit a mitigation proposal that will offset the loss to waters of the United States;

h. Whenever any other NWP is used in conjunction with this NWP, the combined total acres of impacts to waters of the United States cannot exceed 3 acres and any combined total acreage exceeding ⅓ acre requires that the permittee notify the District Engineer in accordance with the ''Notification'' general condition; and

i. Any work authorized with this permit must not cause more than minor changes to the flow characteristics of any stream, or measurably degrade water quality (See General Conditions 9 and 22). (Sections 10 and 404)

***Note:** For the purposes of the proposed NWP, a discussion of acreage limit options is provided in the preamble.

B. Master Planned Development Activities

Discharges into non-tidal waters of the United States, excluding non-tidal

wetlands contiguous to tidal waters, associated with a comprehensively planned development which may include a combination of, but is not limited to, the following: residential housing, office parks, retail stores, restaurants, playgrounds, ball fields, golf courses, ponds, impoundments, community green space, parks, trails, soil erosion and sediment control measures, sewage and/or water treatment facilities, storm water management facilities, and infrastructure such as utilities, roads, driveways, and sidewalks, provided that the activity meets all of the following criteria:

a. The discharge does not cause the loss of greater than 10 acres of non-tidal waters of the United States, using an index of impact acreage as follows*:

Parcel size	Maximum acreage loss authorized
100–200 acres	3 acres.
200–300 acres	5 acres.
300–500 acres	7 acres.
Greater than 500 acres	10 acres.

b. The permittee notifies the District Engineer in accordance with the ''Notification'' general condition;

c. For discharges in all waters of the United States, including wetlands, the notification must also include a delineation of affected waters and/or wetlands;

d. The notification will include a wetland assessment utilizing a functional assessment approach approved by the District Engineer;

e. The discharge is part of a single and complete project; however the activity may proceed in phases;

f. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (i.e., why the discharge must occur in waters of the United States and why avoidance or additional minimization cannot be achieved);

g. The notification must include a mitigation proposal that will offset the loss to waters of the United States;

h. Deed restrictions, protective covenants, land trusts, or other means of conservation and preservation will be required for all waters of the United States, including wetlands, on the project site, including riparian buffers and/or vegetated buffers adjacent to open water, as well as all existing, enhanced, restored, or created wetland areas; and

i. Whenever any other NWP is used in conjunction with this NWP, the combined total acres of impacts to waters of the United States cannot exceed 10 acres.

Master Planned Development: The intent of defining Master Planned Development is to distinguish these activities from those that would be authorized under NWP A. Unlike NWP A, this NWP is limited to authorizing those activities that are mixed-use in nature. Master planned developments are designed, constructed, and managed to integrate multiple uses in a manner that conserves and enhances the functions and values of the water resources on the project site. NWP B is intended to be consistent with the increasing nationwide efforts by counties and local communities across the country to encourage mixed-use development and to motivate land use planning alternatives that incorporate consideration of the environment. This NWP is designed to match up with the efforts of local communities to achieve these goals by encouraging the development of environmentally responsible, multiple-use communities and building upon the incentives currently provided by State and local governments. Such master planned developments provide communities with an opportunity to address a variety of concerns, including protecting sensitive natural areas, consolidating infrastructure and maximizing the delivery of urban services. The project may consist of cluster developments surrounded by a substantial amount of open or green space, including vegetated buffers to waters of the United States. All remaining waters of the United States on the project site, including wetlands and riparian areas that are restored, enhanced, or created as compensatory mitigation for impacts authorized by this NWP, as well as vegetated buffers, will be set aside and preserved through deed restrictions, protected covenants, land trusts, or other legal means, to protect these areas and maintain water quality and aquatic resource values. (Sections 10 and 404)

***Note:** For the purposes of the proposed NWP, a discussion of acreage limit options is provided in the preamble.

C. Stormwater Management Facilities

Discharges of dredged or fill material into non-Section 10 waters of the United States, including wetlands, for the construction and maintenance of stormwater management facilities, including activities for the excavation for stormwater ponds/facilities, detention, and retention basins, installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities, detention and retention basins provided that the activity meets all of the following criteria:

a. The discharge or excavation for the construction of new stormwater management facilities does not cause the loss of greater than 2 acres of non-tidal wetlands;

b. For discharges or excavation for the construction of new stormwater management facilities causing the loss of greater than ⅓ acre of non-tidal waters of the United States, including wetlands, or for the maintenance of existing stormwater management facilities causing the loss of greater than 1 acre of non-tidal waters of the United States, or for the loss of greater than 500 linear feet of intermittent stream bed, the permittee notifies the District Engineer in accordance with the ''Notification'' general condition. In addition the notification must include:

(1) A maintenance plan, which is in accordance with State and local requirements, if any;

(2) For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected areas; and

(3) For discharges involving construction of stormwater management facilities, the notification must include a mitigation proposal that will offset the loss of waters of the United States. In appropriate circumstances, compensatory mitigation can be provided by the use of bioengineering techniques and aquatic benches within the stormwater management facility. Compensatory mitigation will not be allowed in designated facility maintenance areas. Where the size of the facility allows for the construction of sediment forebays, such designs will be used to the maximum extent practicable to enhance water quality and to minimize the maintenance area of the facility. Future maintenance in constructed areas will not require mitigation provided that maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas.

c. The stormwater management facility must be designed using Best Management Practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize

adverse effects to aquatic resources from storm flows especially downstream of the facility, as appropriate) that provide for long term aquatic protection and enhancement, to the maximum extent practicable;

d. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and

e. The discharge is part of a single and complete project.

f. This permit does not authorize the discharge of dredged or fill material for the construction of new stormwater management facilities in perennial streams. (Section 404)

D. Passive Recreational Facilities. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands contiguous to tidal waters, for the construction or expansion of passive recreational facilities, provided that the activity meets all of the following criteria:

a. The discharge does not cause the loss of greater than 1 acre of non-tidal waters of the United States, including non-tidal wetlands;

b. For discharges causing the loss of greater than ⅓ acre of non-tidal waters of the United States, or the loss of greater than 500 linear feet of stream bed, the permittee notifies the District Engineer in accordance with the ''Notification'' general condition;

c. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites, including wetlands; and

d. The discharge is part of a single and complete project.

A *passive recreational facility* is defined as a low-impact recreational facility that is integrated into the natural landscape and consists primarily of open space that does not substantially change preconstruction grades or deviate from natural landscape contours. The primary function of passive recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of passive recreational facilities that may be authorized by this NWP include: hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). The construction or expansion of golf courses and ski areas may be authorized by this NWP, provided the golf course or ski area does not substantially deviate from natural landscape contours and is designed to minimize adverse effects to waters of the United States and riparian areas through the use of such practices as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have an adequate water quality management plan in accordance with General Condition 9, such as a stormwater management facility constructed in uplands to ensure that the recreational facility results in no substantial adverse effects to water quality. This NWP also authorizes support facilities, such as maintenance and storage buildings, office buildings, rental buildings, and stables that are directly related to the recreational activity. It does not authorize other buildings, hotels, restaurants, etc. Whenever any other NWP is used in conjunction with this NWP, the total acreage of impacts to waters of the United States of all NWPs combined, cannot exceed 1 acre. The construction or expansion of playing fields (e.g., baseball or football fields), basketball and tennis courts, race tracks, stadiums, and arenas is not authorized by this NWP. (Section 404)

E. Mining Activities

Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands contiguous to tidal waters, for aggregate mining (i.e., sand, gravel, crushed and broken stone) and hard rock metal/mineral mining activities (i.e., extraction of metalliferous ores from subsurface locations), including exploration, excavation, dredging, processing, stream relocation and/or diversion, overburden disposal, stockpiling, mechanized landclearing, mined land reclamation, and support activities, provided the discharge meets all of the following criteria:

a. *Lower perennial riverine systems:* Any discharges for excavation and dredging activities associated with sand and gravel mining in lower perennial riverine systems as defined by the Cowardin classification system for aquatic habitats (areas that are defined as special aquatic sites [40 CFR Subpart E, 230.40 through 230.45] are excluded), must:

1. not cause the loss of greater than 2 acres of waters of the United States;

2. not result in the excavation of fish spawning areas and shellfish beds;

3. include necessary measures to prevent increases in stream gradient and water velocities, to prevent adverse effects (e.g., head cutting, bank erosion) on upstream and downstream channel conditions;

4. not result in adverse affects on the course, capacity, or condition of navigable waters of the United States; and

5. include measures to minimize downstream turbidity;

b. *Intermittent and ephemeral streams:* Any discharges for excavation, dredging, processing, exploration, trenching, stockpiling, and mined land reclamation activities associated with sand and gravel mining activities in intermittent and ephemeral streams (areas that are defined as special aquatic sites [40 CFR Subpart E, 230.40 through 230.45] are excluded), must:

1. not cause the loss of greater than 1 acre of waters of the United States; and

2. include necessary measures to prevent increases in stream gradient and water velocities, to prevent adverse effects (e.g., head cutting, bank erosion) on upstream and downstream channel conditions;

c. *Intermittent and small perennial stream relocations:* Any discharges for stream relocation/diversion activities (i.e., mining may not occur in open waters below the ordinary high water mark; only stream relocation and diversion are authorized) associated with crushed or broken stone mining in intermittent and small perennial streams (areas that are defined as special aquatic sites [40 CFR Subpart E, 230.40 through 230.45] are excluded), must:

1. not cause the loss of greater than 1 acre of waters of the United States;

2. include necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (e.g., head cutting, bank erosion) on upstream and downstream channel conditions; and

3. not result in the excavation of fish spawning areas and shellfish beds;

d. *Isolated wetlands and wetlands above the ordinary high water mark, in non-Section 10 waters:* Any discharges for excavation, exploration, dredging, processing, mechanized landclearing, stockpiling, stream relocation/diversion, on-site overburden disposal, and mined land reclamation associated with aggregate mining activities in isolated wetlands and wetlands above the ordinary high water mark in non-Section 10 streams, must:

1. not cause the loss of greater than 2 acres of waters of the United States; and

2. be compensated for through mitigation approved by the Corps;

e. *Dry washes and arroyos:* Any discharges, including excavation, associated with aggregate mining activities in dry washes and arroyos, must:

1. not cause the loss of greater than 2 acres of waters of the United States;

2. include necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (e.g., head cutting, bank erosion)

on upstream and downstream channel conditions; and

3. include necessary measures to prevent adverse water quality effects on groundwater resources;

f. *Intermittent and small perennial stream relocations:* Any discharges for stream relocation/diversion activities (i.e., mining may not occur in open waters below the ordinary high water mark; only stream relocation and diversion are authorized) associated with hard rock metal/mineral mining activities in intermittent and small perennial streams (areas that are defined as special aquatic sites [40 CFR Subpart E, 230.40 through 230.45] are excluded), must:

1. not cause the loss of greater than 1 acre of waters of the United States;

2. include necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (e.g., head cutting, bank erosion) on upstream and downstream channel conditions; and

3. not result in the excavation of fish spawning areas and shellfish beds;

g. *Isolated wetlands and wetlands above the ordinary high water mark, in non-Section 10 waters:* Any discharges for excavation, exploration, dredging, processing, mechanized landclearing, stockpiling, stream relocation/diversion, on-site overburden disposal, and mined land reclamation associated with hard rock metal/mineral mining activities in isolated wetlands and wetlands above the ordinary high water mark in non-Section 10 streams, must:

1. not cause the loss of greater than 2 acres of waters of the United States; and

2. be compensated for through mitigation approved by the Corps;

h. *Dry washes and arroyos:* Any discharges, including excavation, associated with hard rock metal/mineral mining activities in dry washes and arroyos, must:

1. not cause the loss of greater than 2 acres of waters of the United States;

2. include necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (e.g., head cutting, bank erosion) on upstream and downstream channel conditions; and

3. include necessary measures to prevent adverse water quality effects on groundwater resources;

i. *Support activities:* Any discharges for support activities associated with aggregate mining and/or hard rock metal/mineral mining activities, including the construction of berms, access and haul roads, rail lines, dikes, road crossings, settling ponds and settling basins, ditching, storm water and surface water management, head cutting prevention, sediment and erosion controls, and mechanized land clearing, must not cause the loss of more than 1 acre of waters of the United States, including wetlands. This acreage limit does not include temporary mining roads that are exempt under Section 404(f). The limit of 1 acre of impact for support activities will be in addition to the acreage allowed for the mining activities;

j. *Single and complete project:* The discharges must be for a single and complete project. Multiple mining activity discharges into several designated parcels of a mining project, may be included together as long as the acreage limit for each aquatic resource type is not exceeded and the combination of more than one aquatic resource type does not exceed 2 acres. The total maximum acreage of waters of the United States adversely affected by the mining activities combined with the support activities will not exceed 3 acres (2 acres)*;

k. *Notification:* The permittee notifies the District Engineer in accordance with the ''Notification'' general condition. The notification must include a description of all waters of the United States impacted by the project, and, where required, a discussion of measures to minimize or prevent adverse effects (e.g., head cutting, bank erosion, turbidity, water quality) to waters of the United States, a description of measures taken to meet the criteria associated with the discharge being permitted, and a reclamation plan; and

l. Authorized activities associated with hard rock/mineral mining may include beneficiation and mineral processing. This NWP does not authorize hard rock/mineral mining in Section 10 waters or any mining activity in wetlands that are contiguous to tidal waters. (Sections 10 and 404)

***Note:** For the purposes of the proposed NWP, a discussion of acreage threshold options being considered for NWP E is provided in the preamble.

F. Reshaping Existing Drainage Ditches

Discharges of dredged or fill material into non-Section 10 waters of the United States to modify the cross-sectional configuration of existing serviceable drainage ditches constructed in non-Section 10 waters of the United States. No compensatory mitigation is required if the work is designed to improve water quality (e.g., by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.). The reshaping of the ditch cannot increase drainage beyond the original project boundaries or expand the area drained by the ditch as originally designed (i.e., the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the United States). The permittee must notify the District Engineer in accordance with the ''Notification'' general condition, if material excavated during ditch reshaping is sidecast into waters of the United States. This NWP does not apply to reshaping drainage ditches constructed in uplands, since these areas are not waters of the United States, or to the maintenance of existing drainage ditches to their original dimensions and configuration, which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize the reshaping and maintenance of drainage ditches in navigable waters of the United States, which requires a Section 10 permit. This NWP does not authorize stream channelization or stream relocation projects. (Section 404)

3. Maintenance Activities related to: (i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification, and the District Engineer receives notification for all work other than the replacement of a structure. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the environmental impacts resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This nationwide permit authorizes the repair, rehabilitation, or replacement of those structures destroyed or damaged by storms, floods, fire or other discrete events, provided the repair,

rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays. Maintenance dredging and beach restoration are not authorized by this nationwide permit.

(ii) Discharges of dredged or fill material, including excavation, into any waters of the United States to remove accumulated sediments and debris in the vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional rip rap to protect the structure, provided the permittee notifies the District Engineer in accordance with the ''Notification'' general condition. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure, or to ensure the safety of the structure. This NWP does not authorize new stream channelization or stream relocation projects. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into waters of the United States for the restoration of upland areas damaged by a storm, flood or other discrete event, and minor dredging to remove obstructions in a waterbody adjacent to the upland, where such work requires activities in a regulated water of the United States, provided that the District Engineer receives notification within 12 months of the date of the damage, subject to the following criteria;

a. The extent of the proposed restoration must be justified by a recent topographic survey, or other evidence of the pre-existing conditions. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed prior to the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions, and the extent of any restoration work;

b. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the degree needed to restore the pre-existing bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities;

c. For activities affecting greater than ⅓ acre of waters of the United States, the permittee notifies the District Engineer in accordance with the ''Notification'' general condition;

d. The discharge of dredged or fill material and all related work needed to restore the upland is part of a single and complete project;

e. This permit authorizes such work, provided the District Engineer has been notified as appropriate in accordance with condition (3) within 12 months of the date of the damage, and the work has commenced, or is under contract to commence, within 2 years of the date of the damage;

f. This permit may not be used in conjunction with NWP 18 or NWP 19;

g. This NWP cannot be used to channelize a stream, and any work authorized must not cause more than minor changes to the hydraulic flow characteristics of the stream, increase flooding, or measurably degrade water quality (See General Conditions 9 and 22); and

h. This permit may not be used to reclaim historic lands lost, over an extended period of time, to normal erosion processes. (Sections 10 and 404)

7. Outfall Structures and Maintenance. Activities related to: (i) Construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act), and (ii) maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided that the activity meets all of the following criteria: a

a. The permittee notifies the District Engineer in accordance with the ''Notification'' general condition;

b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and canals to original design capacities and design configurations (i.e., depth and width);

c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and

d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the United States.

The construction of intake structures is not authorized by this NWP, unless they are directly associated with an outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility. (Sections 10 and 404)

12. Utility Activities. Discharges of dredged or fill material into waters of the United States and/or structures in, over, or under navigable waters of the United States for the following utility activities:

(i) Utility lines: The construction or maintenance of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, provided there is no change in preconstruction contours. A ''utility line'' is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the United States, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side-casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6″ to 12″ of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody. This NWP also includes the repair of existing utility lines.

(ii) Electric or pumping substations: The construction, maintenance, or expansion of an electric or pumping substation, provided the discharge does

not result in the loss of greater than 1 acre of non-Section 10 waters of the United States.

(iii) Foundations for overhead utility line towers, poles, and anchors: The construction or maintenance of foundations for overhead utility lines, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) Access roads: The construction of access roads for the construction and maintenance of utility lines, including overhead power lines, and substations is authorized, provided the discharge does not cause the loss of greater than 1 acre of non-Section 10 waters of the United States, excluding non-tidal waters contiguous with Section 10 waters. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the United States and at preconstruction contours and elevations, or as near as possible (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

The term *utility line* does not include activities which drain a water of the United States, such as drainage tile or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the acreage of loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. However, the term ''loss'' applies only to waters of the United States permanently affected by filling, flooding, excavation, or drainage and not to waters of the United States that are temporarily affected by the work and restored to preconstruction contours and wetland conditions. Temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work are not included in the calculation of permanent loss of waters of the United States.

Mechanized landclearing necessary for the installation and maintenance of utility lines and the construction and maintenance of electric and pumping substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the United States that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the United States, even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Construction of access roads or the construction or expansion of electric or pumping substations in navigable waters of the United States is not authorized by this NWP.

Notification: The permittee must notify the District Engineer in accordance with the ''Notification'' general condition, if any of the following criteria are met:

(a) Mechanized landclearing in a forested wetland for the right-of-way;

(b) A Section 10 permit is required;

(c) The utility line in waters of the United States, excluding overhead lines, exceeds 500 feet;

(d) The utility line is placed within a jurisdictional area (i.e., a water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area;

(e) Discharges associated with the construction of electric or pumping substations that result in the loss of greater than ⅓ acre of non-tidal waters of the United States; or

(f) Permanent access roads constructed above grade in waters of the United States for a distance of more than 500 feet.

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the River and Harbor Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33. (Sections 10 and 404)

14. Linear Transportation Crossings. Activities required for the construction, expansion, modification or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the United States, including wetlands, provided that the activity meets the following criteria:

a. For public linear transportation crossings, the discharge is limited to non-tidal waters of the United States, excluding non-tidal wetlands contiguous to tidal waters, and does not cause the loss of greater than 2 acres (1 acre)* of non-tidal waters of the United States;

b. For private linear transportation crossings in waters of the United States or public linear transportation crossings in tidal waters or in non-tidal wetlands contiguous to tidal waters, the discharge does not cause the loss of greater than ⅓ acre of waters of the United States, including wetlands, and the length of the fill for the crossing in waters of the United States is limited to 200 linear feet;

c. The permittee notifies the District Engineer in accordance with the ''Notification'' general condition for discharges into special aquatic sites, including wetlands, or that cause the loss of greater than ⅓ acre of waters of the United States;

d. For public linear transportation crossings, the notification must include a mitigation proposal that will offset the loss of waters of the United States;

e. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of the affected special aquatic sites;

f. The width of the fill is limited to the minimum necessary for the crossing;

g. This NWP cannot be used to channelize a stream, and any work authorized must not cause more than minor changes to the hydraulic flow characteristics of the stream, increase flooding, or measurably degrade water quality (See General Conditions 9 and 22); and

h. The crossing is part of a single and complete project for crossing a water of the United States.

Some discharges for crossings may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4). (Sections 10 and 404)

***Note:** For the purposes of this proposed modification to NWP 14, a discussion of acreage threshold options being considered for NWP 14 is provided in the preamble.

27. Stream and Wetland Restoration Activities. Activities in waters of the United States associated with the restoration and enhancement of former non-tidal wetlands and riparian areas, the enhancement of degraded wetlands

and riparian areas, the creation of wetlands and riparian areas, and the restoration and enhancement of non-Section 10 streams and open water areas; (i) on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration or creation agreement between the landowner and the U.S. Fish and Wildlife Service or the Natural Resources Conservation Service (NRCS) or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or (ii) on any Federal land; or (iii) on reclaimed surface coal mined lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining or the applicable State agency. (The future reversion does not apply to streams or wetlands created, restored or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank.); or (iv) on any public or private land, provided the permittee notifies the District Engineer in accordance with the ''Notification'' general condition.

Such activities include, but are not limited to, the removal of accumulated sediments, the installation, removal and maintenance of small water control structures, dikes and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation; mechanized land-clearing to remove undesirable vegetation; and other related activities. This NWP cannot be used to authorize activities for the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP cannot be used to channelize a stream. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP may be used to relocate aquatic habitat types on the project site, provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in an emergent wetland, provided the emergent wetland is replaced by creating that wetland type in the adjacent uplands.

Reversion. For enhancement, restoration and creation projects conducted under paragraphs (ii) and (iv), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit at that time would be required for any reversion. For restoration, enhancement and creation projects conducted under paragraphs (i) and (iii), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities) within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. The five year reversion limit does not apply to agreements without time limits reached under paragraph (i). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate State agency executing the agreement or permit. Prior to any reversion activity the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted back to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date. Because projects that would be authorized by this permit are designed to enhance the aquatic environment, mitigation will not be required for the work. (Sections 10 and 404)

40. Agricultural Activities. Discharges of dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands, for the purpose of improving agricultural production and construction of building pads for farm buildings. Activities authorized include installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing, land leveling, and similar activities, provided:

a. The Natural Resources Conservation Service (NRCS) has made a written notification based on an NRCS certified wetland determination that the activity qualifies for a minimal effect exemption in accordance with the provisions of the Food Security Act (16 U.S.C. 3801 *et seq.*) and the National Food Security Act Manual (NFSAM) and the discharge does not cause a loss of greater than 1 acre of non-tidal wetlands and no greater than ⅓ acre of playas, prairie potholes, or vernal pools;

b. The discharge does not cause a loss of greater than 3 acres of non-tidal wetlands on a farm, using an index of impact acreage as follows:

Farm Size	Maximum acreage loss authorized for wetlands on a farm
Less than 15 acres	¼ acre.
15–25 acres	½ acre.
25–50 acres	¾ acre.
50–100 acres	1 acre.
100–500 acres	2 acres.
Greater than 500 acres	3 acres.

and the permittee submits an NRCS (for USDA program participants and non-participants) or Corps (for USDA non-participants only) approved mitigation plan fully offsetting wetland losses;

c. The discharge does not cause the loss of greater than 1 acre of naturally vegetated playas, prairie potholes, or vernal pools, using an index of impact acreage as follows:

Farm size	Maximum acreage loss authorized for playas, prairie potholes, and vernal pools
Less than 25 acres	¼ acre.
25–100 acres	½ acre.
100–500 acres	¾ acre.
Greater than 500 acres	1 acre.

and the permittee submits an NRCS (for USDA program participants and non-participants) or Corps (for USDA non-participants only) approved mitigation plan fully offsetting wetland losses;

d. For construction of building pads for farm buildings, the discharge does not cause the loss of greater than 1 acre of wetlands (not to include playas, prairie potholes, and vernal pools) that were in agricultural production prior to December 23, 1985; or

e. Any activity in other waters of the United States is limited to the relocation of existing serviceable drainage ditches and previously substantially manipulated intermittent and small perennial streams.

For the purposes of this NWP, the acreage of loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding,

excavation or drainage as a result of the project. Also, authorized activities involving excavation or drainage cannot have the effect of adversely impacting jurisdictional areas through flooding, draining, or restricting the flow and circulation of waters of the United States, including wetlands, beyond the acreage permitted. The acreage limits for the above activities to improve agriculture production are a cumulative limit not to exceed each limit above nor exceed a total of 3 acres per farm for the duration of this nationwide permit (i.e., until reissuance or any revocation). When this NWP is reissued it may be used again on the same farm to authorize activities for impacts not to exceed the acreage thresholds authorized in the reissuance. (The term ''farm'' refers to a land unit under one ownership operated as a farm as reported to the Internal Revenue Service.) This NWP may not be used in conjunction with any other NWP to exceed the acreage limits listed in (a), (b), (c) and (d) above for the purpose of increasing acreage for agriculture production. Regulated discharges associated with the mitigation are authorized and not calculated into the overall acreage figure. Work in waters of the United States not authorized by the above provisions, may be authorized by other NWPs (e.g., NWP 3—maintenance, NWP 13—bank stabilization, and NWP 27—wetland restoration).

Notification: The permittee must notify the District Engineer in accordance with the ''Notification'' general condition for the loss of: (1) Greater than ⅓ acre of non-tidal wetlands, or (2) greater than 500 linear feet of drainage ditches and previously substantially manipulated intermittent and small perennial streams. The appropriate Federal and State agencies will be notified for the loss of greater than 1 acre of non-tidal wetlands, in accordance with paragraph (e) of General Condition 13. The notification must also include any past use of this NWP on the farm. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of the affected area.

This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under Section 404 of the Clean Water Act (CWA) (33 CFR Part 323.4) even though a minimal effect/mitigation determination may be required by the NRCS. (Section 404)

Note: For the purposes of this proposed modification to NWP 40, a discussion of acreage limit options, the types of waters affected in paragraph (b), and the definition of single and complete project, is provided in the preamble.

C. Nationwide Permit General Conditions

The following general conditions must be followed in order for any authorization by a NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

4. Aquatic Life Movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. Regional and Case-by-Case Conditions. The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State or tribe in its section 401 water quality certification.

7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)

8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Water Quality. In certain States and tribal lands an individual 401 water quality certification must be obtained or waived (See 33 CFR 330.4(c)). For NWPs 12, 14, 17, 18, 21, 32, 40, A, B, C, D, and E where the State or tribal 401 certification (either generically or individually) does not require/approve a water quality management plan, the permittee must include design criteria and techniques that provide for protection of aquatic resources. The project must include a method for storm water management that minimizes degradation of the downstream aquatic system, including water quality. To the maximum extent practicable, a vegetated buffer zone (including wetlands, uplands, or both) adjacent to the river, stream, or other open waterbody must be established and maintained, if the project occurs in the vicinity of such an open waterbody. The Corps district will determine the proper width of the buffer and in which cases it will be required.

10. Coastal Zone Management. In certain States, an individual State coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. Endangered Species.

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

(b) Authorization of an activity by a nationwide permit does not authorize the ''take'' of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (*e.g.*, an ESA Section 10 Permit, a Biological Opinion with ''incidental take'' provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal ''takes'' of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world

wide web pages at http://www.fws.gov/~r9endspp/endspp.html and http://kingfish.spp.nmfs.gov/tmcintyr/prot__res.html#ES and Recovery, respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).

13. Notification.

(a) *Timing:* Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a Pre-Construction Notification (PCN) as early as possible and shall not begin the activity:

(1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division engineer; or

(2) If notified by the District or Division engineer that an individual permit is required; or

(3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Notification:* The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s) or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity; and

(4) For NWPs 12, 14, 18, 21, 29, 34, 38, A, B, C, D, and F, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows, (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7—Outfall Structures and Maintenance, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 12—Utility Activities, where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., Section 10 waters), a copy of the PCN must be sent to the National Oceanic Atmospheric Administration, National Ocean Service, for charting the utility line to protect navigation.

(7) For NWP 21—Surface Coal Mining Activities, the PCN must include an OSM or State approved mitigation plan.

(8) For NWP 29—Single-Family Housing, the PCN must also include:

(i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 0.5 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 0.5 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(9) For NWP 31—Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a Pre-Construction Notification (PCN) prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided that the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(10) For NWP 33—Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(11) For NWPs A and B, the PCN must also include a written statement to the District Engineer detailing why the discharge must occur in waters of the United States and additional avoidance or minimization cannot be achieved.

(12) For NWP B—Master Planned Development Activities, the PCN must also include:

(i) a wetland assessment utilizing a functional assessment approach approved by the District Engineer;

(ii) a mitigation proposal that will offset the loss of waters of the United States; and

(iii) evidence of deed restrictions, protective covenants, land trusts, or other means of conservation and preservation for vegetated buffers (both wetland and/or upland) to open water and any existing wetlands, as well as any wetlands restored, enhanced, or created as part of the project.

(13) For NWP C-Stormwater Management Facilities, the PCN must include, for the construction of stormwater management facilities, a mitigation proposal to offset losses of waters of the United States.

(14) For NWPs E-Mining Activities, the PCN must include a description of all waters of the United States impacted by the project and a reclamation plan.

(c) *Form of Notification:* The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(7) of General Condition 13. A letter containing the requisite information may also be used.

(d) *District Engineer's Decision:* In reviewing the pre-construction notification for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse

environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the pre-construction notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.

Any mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the District Engineer will expeditiously review the proposed mitigation plan, but will not commence a second 30-day notification procedure. If the net adverse effects of the project (with the mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions.

(e) *Agency Coordination:* The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For NWPs A, B, C, E, and 40, where the loss of waters of United States is greater than 1 acre, and for NWPs 14, 21, 29, 33, 37, and 38, the District Engineer will, upon receipt of a notification, provide immediately, e.g., facsimile transmission, overnight mail or other expeditious manner, a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. For NWP 40, where the activity results in the loss of greater than ⅓ acre of playas, prairie potholes, or vernal pools, the District Engineer will, upon receipt of notification, provide immediately, a copy of the notification to the appropriate office of the U.S. Fish and Wildlife Service. With the exception of NWP 37, these agencies will then have 5 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 10 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) *Wetlands Delineations:* Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(6)(iii) for parcels less than 0.5 acres in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 30-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

(g) *Mitigation:* Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation necessary to offset all impacts that are more than minimal include, but are not limited to:

(i) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes;

(ii) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, ''in lieu fees'' to non-profit land restoration and stewardship organizations, State or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands. Furthermore, examples of mitigation that may be appropriate and practicable include but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring, enhancing, or preserving similar functions and values. In addition, mitigation must address wetland impacts, such as functions and values, and cannot be simply used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (e.g., for NWP 14, 0.5 acre of wetlands cannot be created to change a 0.75-acre loss of wetlands to a 0.25 acre loss; however, 0.5 created acres can be used to reduce the impacts of a 0.3-acre loss.).

14. Compliance Certification. Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include: a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; b. A statement that any required mitigation was completed in accordance with the permit conditions; c. The signature of the permittee certifying the completion of the work and mitigation.

15. Multiple Use of Nationwide Permits. In any case where any NWP number 12 through 40 and any NWP A through F is combined with any other NWP number 12 through 40 and NWP A through F, as part of a single and complete project, the permittee must notify the District Engineer in accordance with paragraphs a, b, and c of the ''Notification'' General Condition number 13. Any NWP number 1 through 11 may be combined with any other NWP without notification to the Corps, unless notification is otherwise required by the terms of the NWPs. As provided at 33 CFR 330.6(c) two or more different NWPs can be combined to authorize a single and complete project. However, the same NWP cannot be used more than once for a single and complete project.

16. Subdivisions. Discharges in any real estate subdivision created or subdivided after October 5, 1984, which would cause the aggregate total loss of waters of the United States in said subdivision to exceed 3 acres under NWP A or 10 acres under NWP B, is not authorized by this NWP unless the District Engineer exempts a particular subdivision or parcel by making a

written determination that the individual and cumulative adverse environmental effects would be minimal, high quality wetlands would not be adversely affected, and there would be an overall benefit to the aquatic environment. If an exemption is established for a subdivision, subsequent development by individual property owners may proceed using either NWP A or B, as appropriate. For purposes of this condition, the term ''real estate subdivision'' shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial, or other real estate subdivision, including all parcels and parts thereof.

17. Water Supply Intakes. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

18. Shellfish Production. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in areas of concentrated shellfish production, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

19. Suitable Material. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.,) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

20. Mitigation. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material into waters of the United States, must be minimized or avoided to the maximum extent practicable at the project site (i.e., on-site). Furthermore, the District Engineer will require restoration, creation, enhancement, or preservation of other aquatic resources in order to offset the authorized impacts, at least to the extent that adverse environmental effects to the aquatic environment are minimal. An important element of any mitigation plan for projects in or near streams or other open waters is the requirement of vegetated buffers (wetland, upland, or both) adjacent to the open water areas.

21. Spawning Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that physically destroy (e.g., excavate or fill) an important spawning area are not authorized.

22. Management of Water Flows: To the maximum extent practicable, the project must be designed to maintain pre-construction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the project must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The project must provide, to the maximum extent practicable, for retaining excess flows from the site and for establishing flow rates from the site similar to pre-construction conditions. To minimize downstream impacts, such as flooding or erosion, and upstream impacts, such as back-up flooding, the project must not, to the maximum extent practicable, increase water flows from the site, relocate water, or redirect flow beyond pre-construction conditions.

23. Adverse Effects from Impoundments. If the activity, including structures and work in navigable waters of the United States or discharge of dredged or fill material, creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

24. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

25. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

D. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

E. Definitions

1. Aquatic bench: Aquatic benches are those shallow areas around the edge of a permanent pool stormwater management facility that support aquatic vegetation, both submerged and emergent.

2. Best management practices: Best Management Practices (BMPs) are policies, practices, procedures, or structures implemented to mitigate the adverse impacts on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

3. Channelized stream: A channelized stream is a stream that has been manipulated to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, and other activities that change the stream cross-section and other aspects of channel geometry in an effort to increase water conveyance. A channelized stream remains a water of the United States despite the alterations. For the purposes of the NWPs, a channelized stream is not considered to be a drainage ditch.

4. Contiguous wetland: A contiguous wetland is a wetland that is connected by surface waters to other waters of the United States. For example, in tidal ecosystems, contiguous wetlands may be either tidal or non-tidal. For the purposes of the NWPs, contiguous wetlands in tidal ecosystems extend in the same direction as the ebb and flow of the tide; wetlands that are upstream (i.e., either upstream on the main tidal channel or upstream on any linear aquatic system with a defined channel that enters the contiguous wetland) of tidal waters are not considered to be contiguous. Contiguous wetlands in non-tidal systems are normally contiguous to the nearest open water of the United States and perpendicular to a tangent of the OHWM of that open water. Wetlands contiguous with other waters of the United States are adjacent to those waters, but wetlands adjacent to those waters are not necessarily contiguous, as they may be separated from waters of the United States by berms, levees, roads, etc.

5. Drainage ditch: A linear excavation or depression constructed for the purpose of conveying surface runoff or groundwater from one area to another. An ''upland drainage ditch'' is a

drainage ditch constructed entirely in uplands (i.e., not waters of the United States) and is not a water of the United States, unless it becomes tidal or otherwise extends the ordinary high water line of existing waters of the United States. Drainage ditches constructed in waters of the United States (e.g., by excavating wetlands) remain waters of the United States even though they are heavily manipulated to increase drainage. The term ''drainage ditch'' does not include channelized streams. A drainage ditch may be constructed in uplands or wetlands.

6. Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, storm events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

7. Farm: A land unit under one ownership operated as a farm as reported to the Internal Revenue Service.

8. Intermittent stream: An intermittent stream has flowing water during certain times of the year. When the stream bed is located below the water table, groundwater is the primary source of water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

9. Loss of waters of the United States: Waters of the United States that include the filled area and other waters that are adversely affected by flooding, excavation, or drainage as a result of the regulated activity. The acreage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream that is filled or excavated.

10. Noncontiguous wetland: A noncontiguous wetland is a wetland that is not connected by surface waters to other waters of the United States, or is part of a linear aquatic system with a defined channel to the otherwise contiguous wetland. Noncontiguous wetlands may be adjacent to other waters of the United States, but a direct connection to other waters of the United States is lacking. For example, a depressional wetland located on a floodplain that is separated by a narrow band of uplands from the river is a noncontiguous wetland, but still adjacent to that river due to periodic overbank flooding that is a source of hydrology for that wetland. Noncontiguous wetlands also include those wetlands that are tributary to the contiguous wetland or its open water area, where the tributary has a defined channel for water flow.

11. Non-tidal wetland: A non-tidal wetland is a wetland (i.e., a water of the United States) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

12. Perennial stream: A perennial stream has flowing water year-round during a typical year. The stream bed is located below the water table for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

13. Riffle and pool complex: Riffle and pool complexes typically occur in steep gradient sections of perennial streams and consist of alternating stream segments characterized by: 1) the rapid of movement of water over a coarse substrate (e.g., gravel or cobble) with shallow water and 2) the slower movement of water over a finer substrate (e.g., sand or silt) with deeper water.

14. Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the negative impacts of urbanization.

15. Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

16. Tidal wetland: A tidal wetland is a wetland (i.e., a water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters at least two times per month, during spring high tides.

17. Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

18. Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established.

[FR Doc. 98–17399 Filed 6–30–98; 8:45 am]

BILLING CODE 3710–92–P

federal register

Wednesday
July 1, 1998

Part III

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Notice

4810-35

DEPARTMENT OF THE TREASURY

FISCAL SERVICE

(Dept. Circular 570; 1998 Revision)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective July 1, 1998

This Circular is published annually, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular and interim changes may be obtained directly from the Government Printing Office (202) 512-1800. (Interim changes are published in the FEDERAL REGISTER as they occur.) Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6A11, Hyattsville, MD 20782, Telephone (202) 874-6850 or Fax(202) 874-9978.

For the most current list of Treasury authorized companies, all year round, 24 hours a day, free of charge, use your computer modem and dial into our ***computerized public bulletin board*** at (202) 874-6887. The list is also available through the Internet at http://www.fms.treas.gov/c570/index.html. ***Please note that the underwriting limitation published herein is on a per bond basis but this does not limit the amount of a bond that a company can write.*** Companies are allowed to write bonds with a penal sum over their underwriting limitation as long as they protect the excess amount with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11. Please refer to footnote (b) at the end of this publication.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury. Those listed in the front of this Circular are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)]. Those listed in the back are acceptable only as reinsurers on Federal bonds under 31 CFR 223.3(b) [See Note (e)].

If we can be of any assistance, please feel free to contact the Surety Bond Branch at (202) 874-6850.

Mitchell A. Levine
Assistant Commissioner
Financial Information
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

Acadia Insurance Company

BUSINESS ADDRESS: P.O. BOX 9010, Westbrook, ME 04098-5010. PHONE: (207) 772-4300. UNDERWRITING LIMITATION [b/]: $4,494,000. SURETY LICENSES [c,f/]: CT, DE, ME, MD, MA, NH, NY, PA, RI, VT. INCORPORATED IN: Maine.

Acceptance Insurance Company

BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102-1616. PHONE: (402) 344-8800. UNDERWRITING LIMITATION [b/]: $12,881,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CO, GA, IL, IN, IA, KY, ME, MI, NE, ND, OH, TN, VA, WI. INCORPORATED IN: Nebraska.

ACCREDITED SURETY AND CASUALTY COMPANY, INC.

BUSINESS ADDRESS: P.O. Box 568529, Orlando, FL 32856-8529. PHONE: (407) 841-8500. UNDERWRITING LIMITATION [b/]: $778,000. SURETY LICENSES [c,f/]: AL, CT, DE, FL, GA, ID, IN, IA, LA, MD, MN, MS, MO, MT, NV, NJ, NC, ND, OH, PA, RI, SC, SD, TN, VA. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 224-2000. UNDERWRITING LIMITATION [b/]: $1,321,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aegis Security Insurance Company

BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657-9671. UNDERWRITING LIMITATION [b/]: $1,458,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Affiliated FM Insurance Company

BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION [b/]: $2,385,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Allegheny Casualty Company

BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION [b/]: $1,072,000. SURETY LICENSES [c,f/]: CA, DC, FL, ID, IL, IN, LA, MD, MI, MS, NV, NJ, NC, OH, OK, PA, SC, SD, TN, TX, WA, WI. INCORPORATED IN: Pennsylvania.

Allendale Mutual Insurance Company

BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION [b/]: $108,976,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Alliance Assurance Company of America

BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION [b/]: $19,481,000. SURETY LICENSES [c,f/]: AL, AR, CA, CT, DE, DC, FL, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, NC, OK, PA, RI, SC, SD, TN, VA, WV. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

Allied Mutual Insurance Company

BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION [b/]: $23,023,000. SURETY LICENSES [c,f/]: AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

ALLSTATE INSURANCE COMPANY

BUSINESS ADDRESS: 3075 Sanders Rd. Ste. H1A, Northbrook, IL 60062-7127. PHONE: (847) 402-5000. UNDERWRITING LIMITATION [b/]: $1,137,098,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

AMCO Insurance Company

BUSINESS ADDRESS: 701 FIFTH AVENUE, DES MOINES, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION [b/]: $26,782,000. SURETY LICENSES [c,f/]: AZ, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

AMERICAN ALLIANCE INSURANCE COMPANY

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION [b/]: $722,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

AMERICAN ALTERNATIVE INSURANCE CORPORATION

BUSINESS ADDRESS: 555 COLLEGE ROAD EAST - P.O. BOX 5241, PRINCETON, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION [b/]: $9,081,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Automobile Insurance Company

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $6,081,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA

BUSINESS ADDRESS: 11222 Quail Roost Drive, Miami, FL 33157. PHONE: (305) 253-2244. UNDERWRITING LIMITATION [b/]: $11,108,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Casualty Company of Reading, Pennsylvania

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $39,383,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

AMERICAN CONTRACTORS INDEMNITY COMPANY

BUSINESS ADDRESS: 9841 Airport Blvd,, Suite 1414, Los Angeles, CA 90045. PHONE: (310) 649-0990. UNDERWRITING LIMITATION [b/]: $548,000. SURETY LICENSES [c,f/]: CA, NM. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

American Economy Insurance Company

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $43,971,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Fire and Casualty Company

BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION [b/]: $10,696,000. SURETY LICENSES [c,f/]: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, SC, TN, TX, VA. INCORPORATED IN: Ohio.

American Guarantee and Liability Insurance Company

BUSINESS ADDRESS: 1400 AMERICAN LANE, SCHAUMBURG, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION [b/]: $24,949,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Home Assurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $251,958,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The)

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $31,006,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

AMERICAN INTERNATIONAL INSURANCE COMPANY OF PUERTO RICO

BUSINESS ADDRESS: P.O. Box 10181, San Juan, PR 00908. PHONE: (787) 767-6400. UNDERWRITING LIMITATION [b/]: $2,962,000. SURETY LICENSES [c,f/]: PR, VI. INCORPORATED IN: Puerto Rico.

American International Pacific Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $2,116,000. SURETY LICENSES [c,f/]: AK, CO, CT, DC, IA, ME, MD, MA, MS, MT, NE, NH, ND, RI, SD, UT, VT, WV, WY. INCORPORATED IN: Colorado.

American Interstate Insurance Company

BUSINESS ADDRESS: 2301 Highway 190 West, DeRidder, LA 70634-6005. PHONE: (800) 256-9052. UNDERWRITING LIMITATION [b/]: $3,564,000. SURETY LICENSES [c,f/]: AL, AR, FL, GA, ID, IL, IN, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NM, NC, ND, OK, OR, PA, SC, SD, TN, TX, UT, VA, VI, WI, WY. INCORPORATED IN: Louisiana.

American Manufacturers Mutual Insurance Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION [b/]: $21,919,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

American Mercury Insurance Company

BUSINESS ADDRESS: P. O. Box 268847, Oklahoma City, OK 73126-8847. PHONE: (405) 523-2000. UNDERWRITING LIMITATION [b/]: $4,540,000. SURETY LICENSES [c,f/]: AZ, AR, CA, CO, GA, ID, IA, KS, LA, MS, MO, MT, NE, NV, NJ, NM, ND, OK, OR, PA, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Oklahoma.

American Motorists Insurance Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION [b/]: $32,854,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American National Fire Insurance Company

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION [b/]: $2,346,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Re-Insurance Company

BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION [b/]: $205,195,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

AMERICAN RELIABLE INSURANCE COMPANY

BUSINESS ADDRESS: 8655 East Via De Ventura, Scottsdale, AZ 85258. PHONE: (602) 483-8666. UNDERWRITING LIMITATION [b/]: $3,859,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Safety Casualty Insurance Company

BUSINESS ADDRESS: 1845 The Exchange, Suite 200, Atlanta, GA 30339. PHONE: (770) 916-1908. UNDERWRITING LIMITATION [b/]: $899,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

American States Insurance Company

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $87,933,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety Company

BUSINESS ADDRESS: 3901 West 86th Street, Suite 450, Indianapolis, IN 46268-0932. PHONE: (317) 875-8700. UNDERWRITING LIMITATION [b/]: $507,000. SURETY LICENSES [c,f/]: AL, CA, FL, ID, IN, LA, MD, MS, NV, ND, SD, TN, TX. INCORPORATED IN: California.

Amwest Surety Insurance Company

BUSINESS ADDRESS: 5230 Las Virgenes Road, Calabasas, CA 91302. PHONE: (818) 871-2000. UNDERWRITING LIMITATION [b/]: $2,510,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

See Footnotes/Notes at end of Circular

Antilles Insurance Company

BUSINESS ADDRESS: P.O. Box 9023507, San Juan, PR 00902-3507. PHONE: (787) 721-4900. UNDERWRITING LIMITATION [b/]: $2,691,000. SURETY LICENSES [c,f/]: PR. INCORPORATED IN: Puerto Rico.

Arkwright Mutual Insurance Company

BUSINESS ADDRESS: 225 Wyman Street,P.O. Box 9198, Waltham, MA 02254-9198. PHONE: (781) 890-9300. UNDERWRITING LIMITATION [b/]: $84,172,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $3,449,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

ATLANTIC ALLIANCE FIDELITY AND SURETY COMPANY

BUSINESS ADDRESS: 100 Dobbs Lane, Suite 204, Cherry Hill, NJ 08034. PHONE: (609) 795-5575. UNDERWRITING LIMITATION [b/]: $422,000. SURETY LICENSES [c,f/]: AL, CT, DE, DC, FL, GA, IL, KS, KY, MD, MA, MN, MO, NJ, NY, NC, OK, PA, TN, TX. INCORPORATED IN: New Jersey.

Atlantic Mutual Insurance Company

BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION [b/]: $39,155,000. SURETY LICENSES [c,f/]: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

ATLAS ASSURANCE COMPANY OF AMERICA

BUSINESS ADDRESS: 600 College Road East, Princeton, NJ 08540. PHONE: (609) 275-2600. UNDERWRITING LIMITATION [b/]: $36,440,000. SURETY LICENSES [c,f/]: AK, AZ, AR, CA, CO, DE, GA, ID, IL, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New York.

Auto-Owners Insurance Company

BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909-8160. PHONE: (517) 323-1200. UNDERWRITING LIMITATION [b/]: $203,895,000. SURETY LICENSES [c,f/]: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NM, NC, ND, OH, OR, SC, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Michigan.

AXA GLOBAL RISKS US INSURANCE COMPANY

BUSINESS ADDRESS: 199 Water Street, New York, NY 10038. PHONE: (212) 412-0700. UNDERWRITING LIMITATION [b/]: $6,975,000. SURETY LICENSES [c,f/]: AK, AZ, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

BANKERS INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 15707, St. Petersburg, FL 33733-5707. PHONE: (813) 823-4000. UNDERWRITING LIMITATION [b/]: $4,120,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CA, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA, WV, WY. INCORPORATED IN: Florida.

See Footnotes/Notes at end of Circular

BITUMINOUS CASUALTY CORPORATION

BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201. PHONE: (309) 786-5401 x-268. UNDERWRITING LIMITATION [b/]: $15,927,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY

BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. PHONE: (630) 495-9380. UNDERWRITING LIMITATION [b/]: $463,000. SURETY LICENSES [c,f/]: IL, IN, KS, MO, NC, OK, TN, TX. INCORPORATED IN: Illinois.

Boston Old Colony Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $1,974,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Buckeye Union Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $20,572,000. SURETY LICENSES [c,f/]: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

Capital City Insurance Company, Inc.

BUSINESS ADDRESS: P.O. Box 212157, Columbia, SC 29221. PHONE: (803) 781-7118. UNDERWRITING LIMITATION [b/]: $1,849,000. SURETY LICENSES [c,f/]: AL, AR, GA, KY, LA, MS, NC, OK, PA, SC, TN, TX, VA, WV. INCORPORATED IN: S. Carolina.

Capitol Indemnity Corporation

BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. PHONE: (608) 231-4450. UNDERWRITING LIMITATION [b/]: $10,932,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CO, DE, FL, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

Carolina Casualty Insurance Company

BUSINESS ADDRESS: P.O. Box 2575, Jacksonville, FL 32203. PHONE: (904) 363-0900. UNDERWRITING LIMITATION [b/]: $5,544,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

Centennial Insurance Company

BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION [b/]: $17,344,000. SURETY LICENSES [c,f/]: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

CENTURY SURETY COMPANY

BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION [b/]: $1,724,000. SURETY LICENSES [c,f/]: AZ, IN, OH, WV, WI. INCORPORATED IN: Ohio.

Charter Oak Fire Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $13,719,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

See Footnotes/Notes at end of Circular

Chartwell Reinsurance Company

BUSINESS ADDRESS: P.O. Box 120043, Stamford, CT 06912-0043. PHONE: (203) 705-2500. UNDERWRITING LIMITATION [b/]: $9,199,000. SURETY LICENSES [c,f/]: AL, AK, AZ, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, KS, KY, MD, MI, MN, MS, MT, NE, NV, NM, NY, NC, ND, OH, PA, TN, TX, UT, WA, WV, WI. INCORPORATED IN: Minnesota.

Chatham Reinsurance Corporation

BUSINESS ADDRESS: 100 Campus Drive, Florham Park, NJ 07932-1006. PHONE: (973) 443-4660. UNDERWRITING LIMITATION [b/]: $3,476,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DC, HI, ID, IL, IN, IA, KY, MD, MA, MN, NE, NJ, NY, OK, OR, PA, SC, SD, TX, UT, WA, WI. INCORPORATED IN: California.

CHRYSLER INSURANCE COMPANY

BUSINESS ADDRESS: CIMS:465-20-85, P.O. Box 5168, Southfield, MI 48086-5168. PHONE: (248) 948-3443. UNDERWRITING LIMITATION [b/]: $17,063,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

CHUBB INDEMNITY INSURANCE COMPANY

BUSINESS ADDRESS: 100 William Street, New York, NY 10038. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $1,564,000. SURETY LICENSES [c,f/]: AK, AZ, CA, CT, DE, DC, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MO, MT, NJ, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, VA, WA, WI. INCORPORATED IN: New York.

CIGNA INDEMNITY INSURANCE COMPANY

BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $2,743,000. SURETY LICENSES [c,f/]: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, ND, OH, OR, PA, RI, SC, SD, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

CIGNA Insurance Company of the Midwest

BUSINESS ADDRESS: 5929 LAKESIDE BLVD., INDIANAPOLIS, IN 46278. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $3,085,000. SURETY LICENSES [c,f/]: IN. INCORPORATED IN: Indiana.

Cincinnati Casualty Company (The)

BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION [b/]: $17,227,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Ohio.

Cincinnati Insurance Company (The)

BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION [b/]: $227,074,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

BUSINESS ADDRESS: 300 Saint Paul Place, Baltimore, MD 21202. PHONE: (410) 539-0800. UNDERWRITING LIMITATION [b/]: $1,826,000. SURETY LICENSES [c,f/]: AZ, CA, CO, DE, DC, FL, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MO, MT, NE, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY

BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION [b/]: $300,000. SURETY LICENSES [c,f/]: AL, CT, DE, DC, MD, MA, MT, NJ, NM, NY, ND, PA, SD, TX, UT, WV. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Commercial Casualty Insurance Company of Georgia

BUSINESS ADDRESS: 160 Technology Parkway, Norcross, GA 30092. PHONE: (770) 729-8101. UNDERWRITING LIMITATION [b/]: $1,061,000. SURETY LICENSES [c,f/]: FL, GA, IN, LA, SC. INCORPORATED IN: Georgia.

Commercial Insurance Company of Newark, New Jersey

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $4,771,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

Commercial Union Insurance Company

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION [b/]: $49,029,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

CONNECTICUT INDEMNITY COMPANY (THE)

BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (860) 674-6600. UNDERWRITING LIMITATION [b/]: $5,700,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Connecticut Surety Company (The)

BUSINESS ADDRESS: City Place II, 185 Asylum Street, Hartford, CT 06103-3403. PHONE: (860) 527-6732. UNDERWRITING LIMITATION [b/]: $806,000. SURETY LICENSES [c,f/]: AK, AZ, AR, CA, CT, DE, DC, FL, GA, IN, IA, KY, LA, MD, MA, MO, MT, NE, NV, NJ, NY, ND, OH, OR, PA, SC, SD, TX, UT, WA. INCORPORATED IN: Connecticut.

Consolidated Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (317) 581-6400. UNDERWRITING LIMITATION [b/]: $2,449,000. SURETY LICENSES [c,f/]: IL, IN, IA, KY, MI, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $452,190,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Continental Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $32,224,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Continental Reinsurance Corporation

BUSINESS ADDRESS: 200 S. Wacker, 23rd Floor, Chicago, IL 60606. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $20,711,000. SURETY LICENSES [c,f/]: AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, LA, MD, MI, MS, MT, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PR, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

Continental Western Insurance Company

BUSINESS ADDRESS: P.O. Box 1594, Des Moines, IA 50306. PHONE: (515) 278-3000. UNDERWRITING LIMITATION b/: $8,679,000. SURETY LICENSES c,f/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Iowa.

CONTRACTORS BONDING AND INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109-0271. PHONE: (206) 622-7053. UNDERWRITING LIMITATION b/: $2,097,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico

BUSINESS ADDRESS: G.P.O. Box 363846, San Juan, PR 00936-3846. PHONE: (787) 758-8585. UNDERWRITING LIMITATION b/: $11,051,000. SURETY LICENSES c,f/: PR. INCORPORATED IN: Puerto Rico.

CREDIT GENERAL INSURANCE COMPANY

BUSINESS ADDRESS: 3201 Enterprise Parkway - Suite 310, BEACHWOOD, OH 44122. PHONE: (216) 831-7500. UNDERWRITING LIMITATION b/: $1,558,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Ohio.

CUMBERLAND CASUALTY & SURETY COMPANY

BUSINESS ADDRESS: 4311 West Waters Ave. #401, Tampa, FL 33614. PHONE: (813) 885-2112. UNDERWRITING LIMITATION b/: $504,000. SURETY LICENSES c,f/: AR, DE, DC, FL, GA, GU, ID, IN, KY, LA, MD, MA, MO, MT, NE, NV, ND, OR, PA, SC, SD, TN, TX, WA, WV, WY. INCORPORATED IN: Florida.

CUMIS INSURANCE SOCIETY, INC.

BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION b/: $30,586,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DAIRYLAND INSURANCE COMPANY

BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/: $22,095,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DEVELOPERS INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92623. PHONE: (714) 263-3300. UNDERWRITING LIMITATION b/: $557,000. SURETY LICENSES c,f/: AK, AZ, CA, HI, ID, IN, NV, OR, UT, VA, WA. INCORPORATED IN: California.

Developers Surety and Indemnity Company

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92623. PHONE: (714) 263-3310. UNDERWRITING LIMITATION b/: $539,000. SURETY LICENSES c,f/: AZ, CO, DC, ID, IL, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, VA, WI, WY. INCORPORATED IN: Iowa.

DIAMOND STATE INSURANCE COMPANY

BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION b/: $4,058,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Indiana.

See Footnotes/Notes at end of Circular

ECONOMY FIRE & CASUALTY COMPANY

BUSINESS ADDRESS: 500 Economy Court, Freeport, IL 61032. PHONE: (815) 233-2000. UNDERWRITING LIMITATION [b/]: $26,958,000. SURETY LICENSES [c,f/]: AL, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SD, UT, WV, WI, WY. INCORPORATED IN: Illinois.

Empire Fire and Marine Insurance Company

BUSINESS ADDRESS: 13810 FNB Parkway, Omaha, NE 68154-5202. PHONE: (402) 963-5000. UNDERWRITING LIMITATION [b/]: $7,476,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company

BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017. PHONE: (715) 845-5211. UNDERWRITING LIMITATION [b/]: $36,111,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Employers Mutual Casualty Company

BUSINESS ADDRESS: P.O. Box 712, Des Moines, IA 50303-0712. PHONE: (515) 280-2511. UNDERWRITING LIMITATION [b/]: $51,059,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation

BUSINESS ADDRESS: P.O. Box 2991, Overland Park, KS 66201-1391. PHONE: (913) 676-5200. UNDERWRITING LIMITATION [b/]: $440,030,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Erie Insurance Company

BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. PHONE: (814) 870-2000. UNDERWRITING LIMITATION [b/]: $5,464,000. SURETY LICENSES [c,f/]: DC, IN, KY, MD, NY, NC, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

Everest Reinsurance Company

BUSINESS ADDRESS: P.O. Box 830, Liberty Corner, NJ 07938-0830. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $76,749,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

Evergreen National Indemnity Company

BUSINESS ADDRESS: P.O. Box 18295, Columbus, OH 43218. PHONE: (614) 895-1773. UNDERWRITING LIMITATION [b/]: $1,226,000. SURETY LICENSES [c,f/]: AL, AK, CO, DE, DC, GA, ID, IL, IA, KY, MD, MI, MN, MO, MT, NJ, NM, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, WA, WI. INCORPORATED IN: Ohio.

Excelsior Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION [b/]: $3,069,000. SURETY LICENSES [c,f/]: CT, DE, DC, FL, GA, IN, KY, MD, NH, NJ, NY, NC, PA, VT, VA. INCORPORATED IN: New Hampshire.

Executive Risk Indemnity Inc.

BUSINESS ADDRESS: 82 Hopmeadow Street, P.O. Box 2002, Simsbury, CT 06070-7683. PHONE: (860) 408-2000. UNDERWRITING LIMITATION [b/]: $26,556,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

See Footnotes/Notes at end of Circular

EXPLORER INSURANCE COMPANY (THE)

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 350-2400. UNDERWRITING LIMITATION [b/]: $2,446,000. SURETY LICENSES [c,f/]: AZ, CA, ID, IA, MT, NV, NM, OR, TX, UT, WA. INCORPORATED IN: Arizona.

FAR WEST INSURANCE COMPANY

BUSINESS ADDRESS: 5230 Las Virgenes Road, Calabasas, CA 91302. PHONE: (818) 871-2000. UNDERWRITING LIMITATION [b/]: $650,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

Farmers Alliance Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 1401, McPherson, KS 67460. PHONE: (316) 241-2200. UNDERWRITING LIMITATION [b/]: $6,680,000. SURETY LICENSES [c,f/]: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX. INCORPORATED IN: Kansas.

Farmington Casualty Company

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $16,918,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Farmland Mutual Insurance Company

BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315-1030. PHONE: (515) 245-8800. UNDERWRITING LIMITATION [b/]: $6,936,000. SURETY LICENSES [c,f/]: AL, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Federal Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $255,512,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. PHONE: (507) 455-5200. UNDERWRITING LIMITATION [b/]: $79,757,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $20,902,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company of Maryland

BUSINESS ADDRESS: 300 Saint Paul Place, Baltimore, MD 21202. PHONE: (410) 539-0800. UNDERWRITING LIMITATION [b/]: $37,440,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

See Footnotes/Notes at end of Circular

FIDELITY AND GUARANTY INSURANCE COMPANY

BUSINESS ADDRESS: MC0401, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE: (410) 205-3000. UNDERWRITING LIMITATION [b/]: $1,388,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc.

BUSINESS ADDRESS: MC0401, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE: (410) 205-3000. UNDERWRITING LIMITATION [b/]: $2,771,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Financial Pacific Insurance Company

BUSINESS ADDRESS: P.O. BOX 292220, Sacramento, CA 95829-2220. PHONE: (916) 630-5000. UNDERWRITING LIMITATION [b/]: $1,283,000. SURETY LICENSES [c,f/]: AZ, CA, ID, MO, MT, NE, NV, ND, OR, SD, UT. INCORPORATED IN: California.

Fireman's Fund Insurance Company

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $235,704,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $29,801,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

First Community Insurance Company

BUSINESS ADDRESS: 360 Central Avenue, St. Petersburg, FL 33701. PHONE: (813) 823-4000. UNDERWRITING LIMITATION [b/]: $807,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

First Excess and Reinsurance Corporation

BUSINESS ADDRESS: P.O. Box 419369, Kansas City, MO 64141-6369. PHONE: (913) 676-5520. UNDERWRITING LIMITATION [b/]: $31,005,000. SURETY LICENSES [c,f/]: AK, AZ, CA, CT, DC, GA, ID, IL, IN, IA, KS, KY, MI, MS, MO, MT, NE, NM, NY, OH, OK, SD, TN, TX, WA, WV, WI. INCORPORATED IN: Missouri.

FIRST FINANCIAL INSURANCE COMPANY

BUSINESS ADDRESS: 238 International Road, Burlington, NC 27215. PHONE: (336) 586-2500. UNDERWRITING LIMITATION [b/]: $4,227,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MO, MT, NE, NV, NM, NY, ND, OH, OR, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

First Insurance Company of Hawaii, Ltd.

BUSINESS ADDRESS: P.O. Box 2866, Honolulu, HI 96803. PHONE: (808) 527-7777. UNDERWRITING LIMITATION [b/]: $9,835,000. SURETY LICENSES [c,f/]: GU, HI. INCORPORATED IN: Hawaii.

First Liberty Insurance Corporation (The)

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $1,458,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

See Footnotes/Notes at end of Circular

First National Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $7,093,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

FRONTIER INSURANCE COMPANY

BUSINESS ADDRESS: 195 Lake Louise Marie Road, Rock Hill, NY 12775-8000. PHONE: (914) 796-2100. UNDERWRITING LIMITATION [b/]: $13,286,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Frontier Pacific Insurance Company

BUSINESS ADDRESS: 4250 Executive Square, Suite 200, La Jolla, CA 92037. PHONE: (619) 642-5000. UNDERWRITING LIMITATION [b/]: $3,117,000. SURETY LICENSES [c,f/]: CA, NV, NY. INCORPORATED IN: California.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA

BUSINESS ADDRESS: 436 Walnut Street,P.O. Box 1109, Philadelphia, PA 19105-1109. PHONE: (215) 625-1000. UNDERWRITING LIMITATION [b/]: $104,304,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

General Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $71,809,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

General Reinsurance Corporation

BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION [b/]: $534,503,000. SURETY LICENSES [c,f/]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Glens Falls Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $1,191,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co.

BUSINESS ADDRESS: 3555 Farnam Street, Omaha, NE 68131. PHONE: (402) 271-2846. UNDERWRITING LIMITATION [b/]: $1,456,000. SURETY LICENSES [c,f/]: AZ, CA, CO, NE. INCORPORATED IN: Nebraska.

Grain Dealers Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 1747, Indianapolis, IN 46206. PHONE: (317) 923-2453. UNDERWRITING LIMITATION [b/]: $2,724,000. SURETY LICENSES [c,f/]: AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, ND, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

GRANITE RE, INC.

BUSINESS ADDRESS: P.O. Box 20683, Oklahoma City, OK 73156. PHONE: (405) 516-5100. UNDERWRITING LIMITATION [b/]: $188,000. SURETY LICENSES [c,f/]: MN, ND, OK, SD. INCORPORATED IN: Oklahoma.

See Footnotes/Notes at end of Circular

Granite State Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $2,090,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Great American Insurance Company

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION [b/]: $121,649,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Great Northern Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $13,469,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CO, CT, DC, FL, GA, HI, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Greenwich Insurance Company

BUSINESS ADDRESS: One Greenwich Plaza, PO Box 2568, Greenwich, CT 06836-2568. PHONE: (203) 622-5200. UNDERWRITING LIMITATION [b/]: $2,525,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Gulf Insurance Company

BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (972) 650-2800. UNDERWRITING LIMITATION [b/]: $31,754,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Hanover Insurance Company (The)

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION [b/]: $114,758,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. PHONE: (847) 734-4100. UNDERWRITING LIMITATION [b/]: $5,557,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Harleysville Mutual Insurance Company

BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2297. PHONE: (215) 256-5000. UNDERWRITING LIMITATION [b/]: $45,399,000. SURETY LICENSES [c,f/]: AR, CA, CO, DE, DC, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NJ, NM, NC, OH, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Hartford Accident and Indemnity Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $471,853,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

See Footnotes/Notes at end of Circular

Hartford Casualty Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $30,985,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $684,888,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $38,463,000. SURETY LICENSES [c,f/]: IL, PA. INCORPORATED IN: Illinois.

Hartford Insurance Company of the Midwest

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $6,751,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $2,963,000. SURETY LICENSES [c,f/]: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

Hartford Underwriters Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $20,997,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Heritage Mutual Insurance Company [1/]

BUSINESS ADDRESS: 2800 South Taylor Drive, P.O. Box 58, Sheboygan, WI 53082-0058. PHONE: (920) 458-9131. UNDERWRITING LIMITATION [b/]: $15,339,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MO, NE, NV, ND, OH, OR, PA, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Highlands Insurance Company

BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555 x-8334. UNDERWRITING LIMITATION [b/]: $11,203,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company

BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555 x-8334. UNDERWRITING LIMITATION [b/]: $3,452,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK, TX. INCORPORATED IN: Texas.

ILLINOIS NATIONAL INSURANCE CO.

BUSINESS ADDRESS: 500 West Madison Street, Chicago, IL 60606-2511. PHONE: (312) 930-5417. UNDERWRITING LIMITATION [b/]: $2,912,000. SURETY LICENSES [c,f/]: AL, AK, IL, IN, IA, KY, MD, MI, MO, MT, NE, NV, NH, NM, NY, ND, OH, RI, SD, TX, UT, VT, WV, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Indemnity Company of California

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92623. PHONE: (714) 263-3300. UNDERWRITING LIMITATION [b/]: $697,000. SURETY LICENSES [c,f/]: AK, AZ, CA, HI, ID, NV, OR, UT, VA, WA. INCORPORATED IN: California.

Indemnity Insurance Company of North America

BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $6,205,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Independence Casualty and Surety Company

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 350-2400. UNDERWRITING LIMITATION [b/]: $1,618,000. SURETY LICENSES [c,f/]: TX. INCORPORATED IN: Texas.

Indiana Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (317) 581-6400. UNDERWRITING LIMITATION [b/]: $6,539,000. SURETY LICENSES [c,f/]: FL, IL, IN, IA, KY, MI, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Indiana Lumbermens Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268-1168. PHONE: (800) 428-1441 x-710. UNDERWRITING LIMITATION [b/]: $3,714,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION [b/]: $7,253,000. SURETY LICENSES [c,f/]: AZ, CO, IA, KS, MN, MO, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of North America

BUSINESS ADDRESS: 1601 Chestnut St.,P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $15,587,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the State of Pennsylvania (The)

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $59,597,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the West

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 350-2400. UNDERWRITING LIMITATION [b/]: $20,006,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Insurance Corporation of New York (The)

BUSINESS ADDRESS: 500 North Broadway, Suite 142, Jericho, NY 11753. PHONE: (516) 822-9410. UNDERWRITING LIMITATION [b/]: $9,084,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

Insurors Indemnity Company

BUSINESS ADDRESS: P.O. Box 2683, Waco, TX 76702-2683. PHONE: (817) 750-8128. UNDERWRITING LIMITATION [b/]: $223,000. SURETY LICENSES [c,f/]: TX. INCORPORATED IN: Texas.

INTEGRAND ASSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 70128, San Juan, PR 00936-8128. PHONE: (787) 781-0707 x-269. UNDERWRITING LIMITATION [b/]: $3,471,000. SURETY LICENSES [c,f/]: PR, VI. INCORPORATED IN: Puerto Rico.

Intercargo Insurance Company

BUSINESS ADDRESS: 1450 East American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (847) 517-2990. UNDERWRITING LIMITATION [b/]: $2,939,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

International Business & Mercantile REassurance Company

BUSINESS ADDRESS: 307 North Michigan Avenue, Chicago, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION [b/]: $8,275,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

International Fidelity Insurance Company

BUSINESS ADDRESS: One Newark Center, 20th Floor, Newark, NJ 07102-5207. PHONE: (973) 624-7200 x-226. UNDERWRITING LIMITATION [b/]: $3,694,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New Jersey.

ISLAND INSURANCE COMPANY, LIMITED

BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806. PHONE: (808) 531-1311. UNDERWRITING LIMITATION [b/]: $11,062,000. SURETY LICENSES [c,f/]: HI. INCORPORATED IN: Hawaii.

John Deere Insurance Company

BUSINESS ADDRESS: 3400 80th Street, Moline, IL 61265-5886. PHONE: (800) 447-0633. UNDERWRITING LIMITATION [b/]: $14,100,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Kansas Bankers Surety Company (The)

BUSINESS ADDRESS: P. O. Box 1654, Topeka, KS 66601-1654. PHONE: (785) 228-0000. UNDERWRITING LIMITATION [b/]: $5,615,000. SURETY LICENSES [c,f/]: AZ, AR, CO, ID, IL, IN, IA, KS, KY, LA, ME, MI, MN, MS, MO, MT, NE, NM, ND, OK, SD, TN, TX, WI, WY. INCORPORATED IN: Kansas.

Kansas City Fire and Marine Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $1,492,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

KEMPER REINSURANCE COMPANY

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049. PHONE: (847) 320-2600. UNDERWRITING LIMITATION [b/]: $52,966,000. SURETY LICENSES [c,f/]: AL, AZ, CA, DE, DC, GA, ID, IL, IN, IA, KY, MI, MN, MS, NE, NV, NM, OH, OK, OR, PA, PR, RI, TN, TX, UT, WA, WI. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

LIBERTY MUTUAL FIRE INSURANCE COMPANY

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $58,240,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Liberty Mutual Insurance Company

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $487,432,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Lincoln General Insurance Company

BUSINESS ADDRESS: 3350 Whiteford Road, York, PA 17402. PHONE: (717) 757-0000. UNDERWRITING LIMITATION [b/]: $2,209,000. SURETY LICENSES [c,f/]: AL, AR, CO, DE, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

LM Insurance Corporation

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $1,447,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

London Assurance of America Inc. (The)

BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION [b/]: $44,774,000. SURETY LICENSES [c,f/]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

Lumbermens Mutual Casualty Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION [b/]: $108,835,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Lyndon Property Insurance Company

BUSINESS ADDRESS: 645 Maryville Centre Drive, St. Louis, MO 63141-5815. PHONE: (314) 275-5200. UNDERWRITING LIMITATION [b/]: $1,522,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

MARKEL INSURANCE COMPANY

BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. PHONE: (847) 866-2800. UNDERWRITING LIMITATION [b/]: $5,008,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Massachusetts Bay Insurance Company

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION [b/]: $1,733,000. SURETY LICENSES [c,f/]: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, OH, OR, PA, RI, SC, TN, TX, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

See Footnotes/Notes at end of Circular

Merchants Bonding Company (Mutual)

BUSINESS ADDRESS: 2100 Fleur Drive, Des Moines, IA 50321-1158. PHONE: (515) 243-8171. UNDERWRITING LIMITATION b/: $2,063,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Michigan Millers Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 30060, Lansing, MI 48909-7560. PHONE: (517) 482-6211. UNDERWRITING LIMITATION b/: $6,605,000. SURETY LICENSES c,f/: AZ, AR, CA, ID, IL, IN, KS, KY, MI, MO, NE, NY, NC, OH, OK, PA, VA, WI. INCORPORATED IN: Michigan.

Mid-Century Insurance Company

BUSINESS ADDRESS: P. O. Box 2478, Terminal Annex, Los Angeles, CA 90051. PHONE: (213) 932-3200. UNDERWRITING LIMITATION b/: $71,702,000. SURETY LICENSES c,f/: AZ, AR, CA, CO, FL, GA, ID, IL, IN, LA, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221 x-200. UNDERWRITING LIMITATION b/: $6,001,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, IL, IN, IA, KS, LA, MN, MS, MO, MT, NE, NM, ND, OK, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma.

Mid-State Surety Corporation

BUSINESS ADDRESS: 3400 East Lafayette, Detroit, MI 48207. PHONE: (313) 882-7979. UNDERWRITING LIMITATION b/: $1,035,000. SURETY LICENSES c,f/: AL, AR, CT, DE, DC, FL, GA, IL, IN, KS, KY, MD, MI, MN, MO, NJ, NY, OH, PA, SC, TN, UT, VT, VA, WV, WI. INCORPORATED IN: Michigan.

MIDWESTERN INDEMNITY COMPANY (THE) 2/

BUSINESS ADDRESS: 6281 Tri-Ridge Boulevard, Loveland, OH 45140. PHONE: (513) 576-3200. UNDERWRITING LIMITATION b/: $1,909,000. SURETY LICENSES c,f/: AL, AR, CT, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NJ, NY, NC, OH, OK, PA, SC, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Millers Mutual Fire Insurance Company (The)

BUSINESS ADDRESS: P.O. Box 2269, Fort Worth, TX 76113-2269. PHONE: (817) 332-7761. UNDERWRITING LIMITATION b/: $8,730,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DC, FL, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Texas.

Millers Mutual Insurance Association

BUSINESS ADDRESS: 111 East Fourth Street, P.O. Box 9006, Alton, IL 62002-9006. PHONE: (618) 463-3636. UNDERWRITING LIMITATION b/: $3,273,000. SURETY LICENSES c,f/: AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NC, ND, OH, SD, TN, TX, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin

BUSINESS ADDRESS: P. O. Box 463, Austin, MN 55912-0463. PHONE: (507) 437-3231. UNDERWRITING LIMITATION b/: $154,000. SURETY LICENSES c,f/: CO, MN, MT, ND, SD, UT. INCORPORATED IN: Minnesota.

MOTORS INSURANCE CORPORATION

BUSINESS ADDRESS: 3044 West Grand Blvd., Detroit, MI 48202. PHONE: (313) 556-5000. UNDERWRITING LIMITATION b/: $107,131,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

Mountbatten Surety Company, Inc. (The)

BUSINESS ADDRESS: 33 Rock Hill Road, Bala Cynwyd, PA 19004. PHONE: (610) 664-2259. UNDERWRITING LIMITATION [b/]: $905,000. SURETY LICENSES [c,f/]: AL, CT, DE, DC, IL, IN, KY, MD, MS, NJ, NY, OH, PA, SC, TN, VA, WV. INCORPORATED IN: Pennsylvania.

MUTUAL SERVICE CASUALTY INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 64035, St. Paul, MN 55164-0035. PHONE: (612) 631-7000. UNDERWRITING LIMITATION [b/]: $5,369,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NAC Reinsurance Corporation

BUSINESS ADDRESS: One Greenwich Plaza, P.O. Box 2568, Greenwich, CT 06836-2568. PHONE: (203) 622-5200. UNDERWRITING LIMITATION [b/]: $67,331,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

National American Insurance Company

BUSINESS ADDRESS: 1008 Manvel Avenue, Chandler, OK 74834. PHONE: (405) 258-0804. UNDERWRITING LIMITATION [b/]: $3,843,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

National Fire Insurance Company of Hartford

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $68,809,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company

BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (603) 352-4000. UNDERWRITING LIMITATION [b/]: $22,630,000. SURETY LICENSES [c,f/]: CT, DE, DC, ME, MD, MA, MI, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company

BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. PHONE: (402) 536-3000. UNDERWRITING LIMITATION [b/]: $1,398,147,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

NATIONAL REINSURANCE CORPORATION

BUSINESS ADDRESS: 695 East Main St., P.O. Box 10350, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION [b/]: $36,655,000. SURETY LICENSES [c,f/]: AK, AZ, AR, CA, CO, DE, DC, ID, IL, IN, IA, KS, KY, MD, MA, MI, MN, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, PA, PR, RI, TX, UT, VT, VA, WI, WY. INCORPORATED IN: Delaware.

National Surety Corporation

BUSINESS ADDRESS: 233 South Wacker Drive, Suite 2000, Chicago, IL 60606-6308. PHONE: (312) 441-5400. UNDERWRITING LIMITATION [b/]: $10,828,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

National Union Fire Insurance Company of Pittsburgh, PA

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $101,580,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

National-Ben Franklin Insurance Company of Illinois

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $7,913,000. SURETY LICENSES [c,f/]: DC, FL, IL, IN, IA, KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

Nationwide Mutual Insurance Company

BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. PHONE: (614) 249-7111. UNDERWRITING LIMITATION [b/]: $698,585,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

NAVIGATORS INSURANCE COMPANY

BUSINESS ADDRESS: 123 William Street, New York, NY 10038-3871. PHONE: (212) 349-1600. UNDERWRITING LIMITATION [b/]: $10,996,000. SURETY LICENSES [c,f/]: AL, AK, AZ, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NV, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: New York.

Netherlands Insurance Company (The)

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION [b/]: $2,195,000. SURETY LICENSES [c,f/]: AZ, CA, CT, DC, GA, ID, IL, IN, IA, KY, ME, MD, MI, NV, NH, NJ, NY, NC, OH, RI, SC, TN, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

New Hampshire Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $24,537,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Nobel Insurance Company

BUSINESS ADDRESS: 8001 LBJ Freeway - Suite 300, Dallas, TX 75251-1301. PHONE: (972) 644-0434. UNDERWRITING LIMITATION [b/]: $3,092,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Texas.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY

BUSINESS ADDRESS: 650 Elm Street, Manchester, NH 03101-2524. PHONE: (603) 644-6600. UNDERWRITING LIMITATION [b/]: $6,400,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY

BUSINESS ADDRESS: 500 West Madison, Suite 2600, Chicago, IL 60661-2594. PHONE: (312) 648-5000. UNDERWRITING LIMITATION [b/]: $24,583,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

NORTHLAND INSURANCE COMPANY

BUSINESS ADDRESS: P. O. Box 64816, St. Paul, MN 55164-0816. PHONE: (612) 688-4100. UNDERWRITING LIMITATION [b/]: $14,203,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NORTHWESTERN PACIFIC INDEMNITY COMPANY

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (503) 221-4240. UNDERWRITING LIMITATION [b/]: $2,780,000. SURETY LICENSES [c,f/]: CA, OR, TX, WA. INCORPORATED IN: Oregon.

Ohio Casualty Insurance Company (The)

BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION [b/]: $100,135,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company

BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION [b/]: $58,416,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Oklahoma Surety Company

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION [b/]: $674,000. SURETY LICENSES [c,f/]: AR, KS, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company

BUSINESS ADDRESS: P.O. Box 789, Greensburg, PA 15601-0789. PHONE: (724) 834-5000. UNDERWRITING LIMITATION [b/]: $40,906,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company

BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. PHONE: (414) 797-2640. UNDERWRITING LIMITATION [b/]: $2,018,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

ORISKA INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 400, Oriskany, NY 13424. PHONE: (315) 768-2726. UNDERWRITING LIMITATION [b/]: $385,000. SURETY LICENSES [c,f/]: NY. INCORPORATED IN: New York.

Pacific Employers Insurance Company

BUSINESS ADDRESS: 1601 Chestnut Street, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $8,418,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Pacific Indemnity Company [3/]

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $53,049,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

See Footnotes/Notes at end of Circular

Pacific Insurance Company, Limited

BUSINESS ADDRESS: 150 Federal Street, Boston, MA 02110. PHONE: (617) 526-7600. UNDERWRITING LIMITATION [b/]: $31,877,000. SURETY LICENSES [c,f/]: CT, HI. INCORPORATED IN: Connecticut.

Peerless Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION [b/]: $8,088,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company

BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. PHONE: (309) 346-1161. UNDERWRITING LIMITATION [b/]: $3,708,000. SURETY LICENSES [c,f/]: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Pennsylvania General Insurance Company

BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105-1109. PHONE: (215) 625-1000. UNDERWRITING LIMITATION [b/]: $17,933,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CA, CO, CT, DE, DC, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pennsylvania Millers Mutual Insurance Company

BUSINESS ADDRESS: P. O. Box P, Wilkes-Barre, PA 18773-0016. PHONE: (717) 822-8111. UNDERWRITING LIMITATION [b/]: $4,996,000. SURETY LICENSES [c,f/]: AL, AR, CT, DC, FL, GA, IL, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company

BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941. UNDERWRITING LIMITATION [b/]: $14,872,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Phoenix Assurance Company of New York

BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION [b/]: $11,417,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Phoenix Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $57,457,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Pioneer General Insurance Company

BUSINESS ADDRESS: 6780 East Hampden Avenue, Denver, CO 80224. PHONE: (303) 758-8122. UNDERWRITING LIMITATION [b/]: $158,000. SURETY LICENSES [c,f/]: CO. INCORPORATED IN: Colorado.

PLANET INDEMNITY COMPANY

BUSINESS ADDRESS: 216 Sixteenth Street, Suite 1300, Denver, CO 80202. PHONE: (303) 534-5300. UNDERWRITING LIMITATION [b/]: $1,119,000. SURETY LICENSES [c,f/]: CO, ID, ND, PA. INCORPORATED IN: Colorado.

See Footnotes/Notes at end of Circular

PREFERRED NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 407003, Ft. Lauderdale, FL 33340-7003. PHONE: (954) 752-1222. UNDERWRITING LIMITATION [b/]: $2,675,000. SURETY LICENSES [c,f/]: FL, IL. INCORPORATED IN: Florida.

Progressive Casualty Insurance Company

BUSINESS ADDRESS: 6300 Wilson Mills Road, W33, Mayfield Village, OH 44143-2182. PHONE: (440) 461-5000. UNDERWRITING LIMITATION [b/]: $46,489,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

PROTECTION MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: 300 S. Northwest Highway, Park Ridge, IL 60068. PHONE: (847) 825-4474. UNDERWRITING LIMITATION [b/]: $50,560,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Protective Insurance Company

BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636-9800. UNDERWRITING LIMITATION [b/]: $24,692,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Providence Washington Insurance Company

BUSINESS ADDRESS: P.O. Box 518, Providence, RI 02901-0518. PHONE: (401) 453-7000. UNDERWRITING LIMITATION [b/]: $4,635,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Ranger Insurance Company

BUSINESS ADDRESS: P.O. Box 2807, Houston, TX 77252. PHONE: (713) 954-8100. UNDERWRITING LIMITATION [b/]: $7,503,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Redland Insurance Company

BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102-1616. PHONE: (402) 344-8800. UNDERWRITING LIMITATION [b/]: $9,806,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Reliance Insurance Company

BUSINESS ADDRESS: Compliance Department - Three Parkway, PHILADELPHIA, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $76,893,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of Illinois [4/]

BUSINESS ADDRESS: Compliance Department - Three Parkway, PHILADELPHIA, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $4,296,000. SURETY LICENSES [c,f/]: IL. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Reliance National Indemnity Company

BUSINESS ADDRESS: Compliance Department - Three Parkway, PHILADELPHIA, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $3,543,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Reliance Surety Company

BUSINESS ADDRESS: COMPLIANCE DEPARTMENT - THREE PARKWAY, PHILADELPHIA, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $2,121,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Republic Western Insurance Company

BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004-1163. PHONE: (602) 263-6755. UNDERWRITING LIMITATION [b/]: $9,301,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

RLI Insurance Company

BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION [b/]: $26,553,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Royal Indemnity Company

BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION [b/]: $12,701,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

SAFECO Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $93,061,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

SAFECO Insurance Company of Illinois

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $14,525,000. SURETY LICENSES [c,f/]: AZ, CO, IL, KS, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI, WY. INCORPORATED IN: Illinois.

SAFECO National Insurance Company

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $7,131,000. SURETY LICENSES [c,f/]: CO, KY, MD, MO, NY, UT, WI, WY. INCORPORATED IN: Missouri.

SCOR REINSURANCE COMPANY

BUSINESS ADDRESS: 2 World Trade Center, New York, NY 10048. PHONE: (212) 390-5200. UNDERWRITING LIMITATION [b/]: $42,362,000. SURETY LICENSES [c,f/]: AL, AK, AZ, CA, DE, DC, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NM, NY, NC, ND, OH, OK, OR, PA, RI, TN, TX, UT. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

Sea Insurance Company of America (The)

BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION [b/]: $24,895,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Seaboard Surety Company

BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. PHONE: (908) 658-3500. UNDERWRITING LIMITATION [b/]: $15,892,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

SECURITY INSURANCE COMPANY OF HARTFORD

BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (860) 674-6600. UNDERWRITING LIMITATION [b/]: $7,541,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Security National Insurance Company

BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $1,585,000. SURETY LICENSES [c,f/]: AL, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MS, MO, MT, NE, NM, OH, OK, OR, TN, TX, WA, WI, WY. INCORPORATED IN: Texas.

Select Insurance Company

BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (972) 650-2800. UNDERWRITING LIMITATION [b/]: $4,017,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Selective Insurance Company of America

BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. PHONE: (973) 948-3000. UNDERWRITING LIMITATION [b/]: $24,153,000. SURETY LICENSES [c,f/]: AL, DE, DC, GA, IL, IN, IA, MD, MI, MS, NJ, NY, NC, OH, PA, SC, TX, VA, WI. INCORPORATED IN: New Jersey.

SENTINEL INSURANCE COMPANY, LTD.

BUSINESS ADDRESS: 1001 Bishop Street, Honolulu, HI 96813. PHONE: (808) 546-5700. UNDERWRITING LIMITATION [b/]: $2,196,000. SURETY LICENSES [c,f/]: HI. INCORPORATED IN: Hawaii.

Sentry Insurance A Mutual Company

BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION [b/]: $150,173,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

SERVICE INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 9729, Bradenton, FL 34206-9729. PHONE: (941) 746-4107. UNDERWRITING LIMITATION [b/]: $538,000. SURETY LICENSES [c,f/]: AL, FL, GA, SC, TN. INCORPORATED IN: Florida.

Signet Star Reinsurance Company

BUSINESS ADDRESS: 100 Campus Drive, P.O. Box 853, Florham Park, NJ 07932-0853. PHONE: (973) 301-8000. UNDERWRITING LIMITATION [b/]: $27,113,000. SURETY LICENSES [c,f/]: AL, AK, AR, CA, CO, DE, DC, FL, ID, IL, IN, IA, KY, LA, MD, MI, MN, NE, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, WA, WV, WI. INCORPORATED IN: Delaware.

See Footnotes/Notes at end of Circular

SOREMA NORTH AMERICA REINSURANCE COMPANY

BUSINESS ADDRESS: 199 Water Street, New York, NY 10038-3526. PHONE: (212) 480-1900. UNDERWRITING LIMITATION [b/]: $17,459,000. SURETY LICENSES [c,f/]: AK, AZ, CA, CO, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: New York.

St. Paul Fire and Marine Insurance Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION [b/]: $120,040,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION [b/]: $3,480,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION [b/]: $6,624,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Standard Fire Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $68,584,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Star Insurance Company

BUSINESS ADDRESS: 26600 Telegraph Road, Southfield, MI 48034. PHONE: (248) 358-1100. UNDERWRITING LIMITATION [b/]: $7,005,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

State Automobile Mutual Insurance Company

BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215-3976. PHONE: (614) 464-5000. UNDERWRITING LIMITATION [b/]: $71,425,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company

BUSINESS ADDRESS: One State Farm Plaza, Bloomington, IL 61710. PHONE: (309) 766-2311. UNDERWRITING LIMITATION [b/]: $384,931,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Statewide Insurance Company

BUSINESS ADDRESS: P. O. BOX 799, Waukegan, IL 60079-0799. PHONE: (847) 662-0073. UNDERWRITING LIMITATION [b/]: $1,073,000. SURETY LICENSES [c,f/]: AZ, AR, ID, IL, IN, IA, KS, KY, MN, MO, MT, NE, NV, NM, ND, OH, OR, PA, SC, SD, TN, UT, WA, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Sun Insurance Office of America Inc.

BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION [b/]: $37,143,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Surety Company of the Pacific

BUSINESS ADDRESS: P.O. Box 10289, Van Nuys, CA 91410-0289. PHONE: (818) 609-9232. UNDERWRITING LIMITATION [b/]: $813,000. SURETY LICENSES [c,f/]: CA. INCORPORATED IN: California.

Swiss Reinsurance America Corporation

BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. PHONE: (212) 907-8000. UNDERWRITING LIMITATION [b/]: $148,247,000. SURETY LICENSES [c,f/]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

TEXAS PACIFIC INDEMNITY COMPANY

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (214) 754-0777. UNDERWRITING LIMITATION [b/]: $831,000. SURETY LICENSES [c,f/]: AR, TX. INCORPORATED IN: Texas.

TIG Insurance Company

BUSINESS ADDRESS: P. O. Box 152870, Irving, TX 75015. PHONE: (972) 831-5000. UNDERWRITING LIMITATION [b/]: $50,903,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

TIG Insurance Company of Michigan

BUSINESS ADDRESS: P.O. Box 152870, Irving, TX 75015. PHONE: (972) 831-5000. UNDERWRITING LIMITATION [b/]: $2,013,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

TIG Premier Insurance Company

BUSINESS ADDRESS: P.O. BOX 152870, IRVING, TX 75015. PHONE: (972) 831-5000. UNDERWRITING LIMITATION [b/]: $2,606,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

TRANSATLANTIC REINSURANCE COMPANY

BUSINESS ADDRESS: 80 Pine Street, New York, NY 10005. PHONE: (212) 770-2000. UNDERWRITING LIMITATION [b/]: $116,386,000. SURETY LICENSES [c,f/]: AK, AZ, AR, CA, CO, DE, DC, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, NE, NV, NJ, NM, NY, OH, OK, PA, UT, WA, WI. INCORPORATED IN: New York.

Transcontinental Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $23,373,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Transportation Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $9,059,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Travelers Casualty and Surety Company

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $194,661,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of America

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $43,333,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of Illinois

BUSINESS ADDRESS: 2500 Cabot Drive, Lisle, IL 60532. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $29,024,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $162,303,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

TRAVELERS INDEMNITY COMPANY OF AMERICA (THE)

BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $9,275,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Indemnity Company of Connecticut (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $21,380,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Indemnity Company of Illinois (The)

BUSINESS ADDRESS: 2500 Cabot Drive, Lisle, IL 60532. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $6,395,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Tri-State Insurance Company of Minnesota

BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. PHONE: (507) 283-9561. UNDERWRITING LIMITATION [b/]: $2,780,000. SURETY LICENSES [c,f/]: CO, IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, WI. INCORPORATED IN: Minnesota.

Trinity Universal Insurance Company

BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $47,042,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, NM, OH, OK, TN, TX, WA, WI, WY. INCORPORATED IN: Texas.

See Footnotes/Notes at end of Circular

Trinity Universal Insurance Company of Kansas, Inc.

BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $1,004,000. SURETY LICENSES [c,f/]: AL, AZ, CO, GA, ID, IL, IN, IA, KS, KY, LA, MS, MO, MT, NE, NM, OH, OK, OR, TX, WA, WI, WY. INCORPORATED IN: Kansas.

Trumbull Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $2,882,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CO, CT, DE, DC, ID, IL, IN, IA, KY, ME, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, WY. INCORPORATED IN: Connecticut.

Twin City Fire Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $11,434,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

ULICO CASUALTY COMPANY

BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. PHONE: (202) 682-0900. UNDERWRITING LIMITATION [b/]: $4,476,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Underwriters Indemnity Company

BUSINESS ADDRESS: 8 Greenway Plaza, Suite 400, Houston, TX 77046. PHONE: (713) 961-1300. UNDERWRITING LIMITATION [b/]: $418,000. SURETY LICENSES [c,f/]: AL, AR, GA, KY, MS, NE, NM, NC, SC, TX, WV, WY. INCORPORATED IN: Texas.

UNDERWRITERS REINSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 4030, Woodland Hills, CA 91365. PHONE: (818) 225-1000. UNDERWRITING LIMITATION [b/]: $47,290,000. SURETY LICENSES [c,f/]: AZ, CA, DE, DC, ID, IL, IN, IA, KS, MI, MS, NE, NV, NJ, NM, NY, OH, PA, RI, SD, TX, UT, WV, WI. INCORPORATED IN: New Hampshire.

Union Insurance Company

BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501-0439. PHONE: (402) 423-7688. UNDERWRITING LIMITATION [b/]: $1,285,000. SURETY LICENSES [c,f/]: AR, CO, DC, ID, IA, KS, MD, MN, MS, MO, MT, NE, NC, ND, OK, SD, TN, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

United Capitol Insurance Company [5/]

BUSINESS ADDRESS: 400 Perimeter Center Terrace, Suite 345, Atlanta, GA 30346. PHONE: (770) 677-0330. UNDERWRITING LIMITATION [b/]: $5,011,000. SURETY LICENSES [c,f/]: AZ, IL, WI. INCORPORATED IN: Illinois.

United Coastal Insurance Company [6/]

BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 223-5000. UNDERWRITING LIMITATION [b/]: $4,311,000. SURETY LICENSES [c,f/]: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company

BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407-3909. PHONE: (319) 399-5700. UNDERWRITING LIMITATION [b/]: $23,133,000. SURETY LICENSES [c,f/]: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION [b/]: $15,485,000. SURETY LICENSES [c,f/]: PA. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

United Pacific Insurance Company

BUSINESS ADDRESS: COMPLIANCE DEPARTMENT - THREE PARKWAY, PHILADELPHIA, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $2,355,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

United States Fidelity and Guaranty Company

BUSINESS ADDRESS: MC0401, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE: (410) 205-3000. UNDERWRITING LIMITATION [b/]: $105,629,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

UNITED STATES FIRE INSURANCE COMPANY

BUSINESS ADDRESS: 305 Madison Avenue, Morristown, NJ 07960. PHONE: (973) 490-6600. UNDERWRITING LIMITATION [b/]: $45,818,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

United States Surety Company

BUSINESS ADDRESS: P.O. Box 5605, Timonium, MD 21094. PHONE: (410) 453-9522. UNDERWRITING LIMITATION [b/]: $194,000. SURETY LICENSES [c,f/]: MD. INCORPORATED IN: Maryland.

UNITED SURETY AND INDEMNITY COMPANY

BUSINESS ADDRESS: P.O. Box 2111, San Juan, PR 00922-2111. PHONE: (809) 273-1818. UNDERWRITING LIMITATION [b/]: $1,558,000. SURETY LICENSES [c,f/]: PR. INCORPORATED IN: Puerto Rico.

UNIVERSAL BONDING INSURANCE COMPANY

BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. PHONE: (201) 438-7223. UNDERWRITING LIMITATION [b/]: $1,238,000. SURETY LICENSES [c,f/]: NJ, NY, PA. INCORPORATED IN: New Jersey.

UNIVERSAL INSURANCE COMPANY

BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. PHONE: (787) 793-7202. UNDERWRITING LIMITATION [b/]: $5,763,000. SURETY LICENSES [c,f/]: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION [b/]: $4,218,000. SURETY LICENSES [c,f/]: AZ, AR, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America

BUSINESS ADDRESS: P.O. Box 1068, Houston, TX 77251-1068. PHONE: (713) 722-4600. UNDERWRITING LIMITATION [b/]: $1,367,000. SURETY LICENSES [c,f/]: AL, AK, AR, CA, CO, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY

BUSINESS ADDRESS: 6363 College Blvd., Overland Park, KS 66211. PHONE: (913) 339-1000. UNDERWRITING LIMITATION [b/]: $59,006,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

See Footnotes/Notes at end of Circular

Utica Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION [b/]: $30,595,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Valley Forge Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $19,686,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

VAN TOL SURETY COMPANY, INCORPORATED

BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692-6294. UNDERWRITING LIMITATION [b/]: $240,000. SURETY LICENSES [c,f/]: SD. INCORPORATED IN: South Dakota.

VESTA FIRE INSURANCE CORPORATION

BUSINESS ADDRESS: P.O. Box 43360, Birmingham, AL 35243-3360. PHONE: (205) 970-7000. UNDERWRITING LIMITATION [b/]: $28,334,000. SURETY LICENSES [c,f/]: AL, AK, AZ, CO, DC, IL, IA, KS, KY, LA, MA, MI, MN, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Alabama.

Vigilant Insurance Company

BUSINESS ADDRESS: 100 William Street, New York, NY 10038. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $30,969,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company

BUSINESS ADDRESS: 300 Park Boulevard, Suite 500, Itasca, IL 60143-2625. PHONE: (630) 227-4700. UNDERWRITING LIMITATION [b/]: $2,769,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

West American Insurance Company

BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION [b/]: $72,678,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Westchester Fire Insurance Company

BUSINESS ADDRESS: Six Concourse Parkway, Suite 2500, Atlanta, GA 30328-5346. PHONE: (770) 393-9955. UNDERWRITING LIMITATION [b/]: $16,139,000. SURETY LICENSES [c,f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Western Surety Company

BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117-5077. PHONE: (605) 336-0850. UNDERWRITING LIMITATION [b/]: $12,540,000. SURETY LICENSES [c,f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

See Footnotes/Notes at end of Circular

Westfield Insurance Company

BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION [b/]: $31,938,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company

BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION [b/]: $9,240,000. SURETY LICENSES [c,f/]: CA, IA, OH. INCORPORATED IN: Ohio.

WINTERTHUR REINSURANCE CORPORATION OF AMERICA

BUSINESS ADDRESS: Two World Financial Ctr, 225 Liberty Street, 42 Fl, New York, NY 10281-1076. PHONE: (212) 416-5700. UNDERWRITING LIMITATION [b/]: $25,434,000. SURETY LICENSES [c,f/]: AL, AZ, CA, DE, DC, IL, IN, IA, KY, MD, MI, MN, MS, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: New York.

ZENITH INSURANCE COMPANY [7/]

BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. PHONE: (818) 713-1000. UNDERWRITING LIMITATION [b/]: $24,038,000. SURETY LICENSES [c,f/]: AL, AZ, AR, CA, CO, FL, HI, ID, IL, IN, IA, NJ, NM, NY, OR, TX, UT, WA. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]

Capital Reinsurance Company
BUSINESS ADDRESS: 1325 Avenue of the Americas, New York, NY 10019. PHONE: (212) 974-0100. UNDERWRITING LIMITATION [b/]: $34,633,000.

European Reinsurance Corporation of America
BUSINESS ADDRESS: Park Avenue Plaza, 55 East 52nd St., 43rd Fl., New York, NY 10055-0002. PHONE: (212) 317-5400. UNDERWRITING LIMITATION [b/]: $12,260,000.

FOLKSAMERICA REINSURANCE COMPANY
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 312-2500. UNDERWRITING LIMITATION [b/]: $27,583,000.

Generali - U.S. Branch
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 602-7600. UNDERWRITING LIMITATION [b/]: $10,580,000.

Odyssey Reinsurance Corporation
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 978-4700. UNDERWRITING LIMITATION [b/]: $30,637,000.

RISK CAPITAL REINSURANCE COMPANY
BUSINESS ADDRESS: 20 HORSENECK LANE, GREENWICH, CT 06830. PHONE: (203) 862-4300. UNDERWRITING LIMITATION [b/]: $31,665,000.

Tokio Marine and Fire Insurance Company, Limited (The), U.S. Branch
BUSINESS ADDRESS: 101 Park Avenue, New York, NY 10178. PHONE: (212) 297-6600. UNDERWRITING LIMITATION [b/]: $22,426,000.

Zurich Insurance Company, U.S. Branch
BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION [b/]: $72,150,000.

See Footnotes/Notes at end of Circular

FOOTNOTES

1 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

2 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

3 Pacific Indemnity Company changed its state of incorporation from California to Wisconsin, effective December 31, 1997.

4 Reliance Insurance Company of Illinois is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

5 United Capitol Insurance Company changed its state of incorporation from Wisconsin to Illinois, effective January 1, 1998.

United Capitol Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

6 United Coastal Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

7 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company is exactly as it appears in this Circular. Do not hesitate to contact the Company to verify the authenticity of a bond.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a per bond basis. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(c) A surety company must be licensed in the State or other area in which it provides (signs) a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. For updated license information, you may contact the company directly or the applicable state insurance department. Refer to the list of state insurance departments at the end of this publication. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accordance with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event that an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved surplus lines carriers in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in the state. Questions related to this may be directed to the appropriate state insurance department. Refer to the list of state insurance departments at the end of this publication.

STATE INSURANCE DEPARTMENTS	TELEPHONE NO.
Alabama, Montgomery 36130-3401	(334) 269-3550
Alaska, Juneau 99811-0805	(907) 465-2515
Arizona, Phoenix 85012	(602) 912-8420
Arkansas, Little Rock 72204	(501) 371-1325
California, Sacremento 95814	(916) 492-3301
Colorado, Denver 80202	(303) 894-7499
Connecticut, Hartford 06142-0816	(203) 297-3802
Delaware, Dover 19901	(302) 739-4251
D. C., Washington 20013-7200	(202) 727-8000
Florida, Tallahasse 32399-0300	(904) 922-3100
Georgia, Atlanta 30334	(404) 656-2056
Hawaii, Honolulu 96811	(808) 586-2799
Idaho, Boise 83720	(208) 334-2250
Illinois, Springfield 62767	(217) 782-4515
Indiana, Indianapolis 46204-2787	(317) 232-2385
Iowa, Des Moines 50319	(515) 281-5705
Kansas, Topeka 66612	(913) 296-7801
Kentucky, Frankfort 40602	(502) 564-3630
Louisiana, Baton Rouge 70804	(504) 342-5900
Maine, Augusta 04333	(207) 582-8707
Maryland, Baltimore 21202	(410) 333-6300
Massachusetts, Boston 02114	(617) 521-7794
Michigan, Lansing 48909	(517) 373-9273
Minnesota, St. Paul 55101	(612) 296-6848
Mississippi, Jackson 39205	(601) 359-3569
Missouri, Jefferson City 65102-0690	(314) 751-4126
Montana, Helena 59604-4009	(406) 444-2040
Nebraska, Lincoln 68508	(402) 471-2201
Nevada, Carson City 89710	(702) 687-4270
New Hampshire, Concord 03301	(603) 271-2261
New Jersey, Trenton 08625	(609) 292-5360
New Mexico, Sante Fe 87504-1269	(505) 827-4500
New York, New York 10013	(212) 602-0249
North Carolina, Raleigh 27611	(919) 733-7349
North Dakota, Bismarck 58505	(701) 224-2440
Ohio, Columbus 43266-0566	(614) 644-2651
Oklahoma, Oklahoma City 73152-3408	(405) 521-2828
Oregon, Salem 97310	(503) 378-4271
Pennsylvania, Harrisburg 17120	(717) 787-5173
Puerto Rico, Santurce 00910-8330	(809) 722-8686
Rhode Island, Providence 02903	(401) 277-2223
South Carolina, Columbia 29202-3105	(803) 737-6117
South Dakota, Pierre 57501	(605) 773-3563
Tennessee, Nashville 37243-0565	(615) 741-2241
Texas, Austin 78714-9104	(512) 463-6464
Utah, Salt Lake City 84114-1201	(801) 538-3800
Vermont, Montpelier 05620-3101	(802) 828-3301
Virginia, Richmond 23209	(804) 371-9741
Virgin Islands, St. Thomas 00802	(809) 774-2991
Washington, Olympia 98504	(206) 753-7301
West Virginia, Charleston 25305	(304) 558-3394
Wisconsin, Madison 53707-7873	(608) 266-0102
Wyoming, Cheyenne 82002	(307) 777-7401

[FR Doc. 98–17338 Filed 6–30–98; 8:45 am]
BILLING CODE 4810–35–C

federal register

Wednesday
July 1, 1998

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations (FAR); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 15, 19, 52, and 53

[FAC 97–07; FAR Case 97–004B]

RIN 9000–AH59

Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration have agreed to issue Federal Acquisition Circular 97–07, as an interim rule to make amendments to the Federal Acquisition Regulation (FAR) concerning programs for small disadvantaged business (SDB) concerns. These amendments conform to a Department of Justice (DoJ) proposal to reform affirmative action in Federal procurement. DoJ's proposal is designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097 (1995). This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* January 1, 1999.

Applicability Date: The policies, provisions, and clauses of this interim rule are effective for all solicitations issued on or after January 1, 1999.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 31, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97–004B@gsa.gov.

Please cite FAC 97–07, FAR case 97–004B in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT:

Ms. Victoria Moss, Procurement Analyst, Federal Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington DC 20405, Telephone: (202) 501–4764, or Mr. Mike Sipple, Procurement Analyst, Contract Policy and Administration, Director, Defense Procurement, Department of Defense, 3060 Defense Pentagon, Washington DC 20301–3060, Telephone: (703) 695–8567.

For general information call the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

In *Adarand*, the Supreme Court extended strict judicial scrutiny to Federal affirmative action programs that use racial or ethnic criteria as a basis for decisionmaking. In procurement, this means that any use of race in the decision to award a contract is subject to strict scrutiny. Under strict scrutiny, any Federal programs that make race a basis for contract decisionmaking must be narrowly tailored to serve a compelling Government interest.

DoJ developed a proposed structure to reform affirmative action in Federal procurement designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand*. The DoJ proposal was published for public notice and invitation for comments (61 FR 26042, May 23, 1996). The DoJ model is being implemented in several parts: revisions to the FAR and the FAR supplements; Small Business Administration (SBA) regulations; and procurement mechanisms and applicable factors (percentages) determined by the Department of Commerce. The SBA regulations were published for public comment on August 14, 1997 (62 FR 23584). Requirements related to certification, protests, and appeals and other issues are also addressed in SBA's rules. On May 9, 1997, proposed amendments to the FAR, based on the DoJ Model, were published as a proposed rule in the **Federal Register** (62 FR 25786). An interim FAR rule that implemented the price evaluation adjustment for SDB concerns was previously issued in the **Federal Register** on June 30, 1998. This interim rule implements the evaluation factor or subfactor for SDB participation, incentive subcontracting with SDB concerns, and other coverage that is not directly related to the price evaluation adjustment for SDB concerns.

B. Regulatory Flexibility Act

These changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because through the rule small business concerns may be provided benefits in Federal contracting. An Initial Regulatory Flexibility Analysis (IRFA) was submitted to the Chief Counsel for Advocacy of the Small Business Administration. A summary of the IRFA was published along with the FAR proposed rule in the **Federal Register** at 62 FR 25786, May 9, 1997. The economic impact associated with certification and associated costs, as well as other program requirements addressed in the SBA's changes to 13 CFR Parts 121, 124, and 134 have been addressed in analyses prepared by the SBA. The following information is provided to update the IRFA related to this FAR interim rule:

This interim rule would establish in the FAR two procurement mechanisms benefiting small disadvantaged businesses (SDBs). The first of these mechanisms is a source selection evaluation factor or subfactor for planned SDB participation, primarily at the subcontract level, in the performance of a contract in the SIC Major Groups as determined by the Department of Commerce. This evaluation factor or subfactor would be used in competitive, negotiated acquisitions expected to exceed $500,000 ($1,000,000 for construction). This mechanism would not be applied to certain major categories of acquisition, including, for example, small business set-asides, 8(a) acquisitions, and acquisitions in which source selection is based on a cost or price competition between proposals meeting the Government's minimum requirements.

The second mechanism provides for a monetary incentive for subcontracting with SDBs. Contracts resulting from solicitations in which SDB participation is evaluated may provide for a monetary payment to those prime contractors that meet specified targets for SDB participation as subcontractors in the SIC Major Groups as determined by the Department of Commerce.

The rule would also add to the FAR a requirement to evaluate the past performance of offerors in complying with targets for SDB participation and subcontracting plan goals for SDBs whenever past performance is to be evaluated.

The main impact of the rule is expected to be on firms seeking to obtain contracts from Federal government agencies and SDBs seeking subcontracts under those prime contracts. The best available estimate of the number of such firms is 30,000. The basis for this estimate is the IRFA prepared by SBA addressing the changes to 13 CFR Parts 121, 124, and 134. The anticipated costs for certification and protest and appeal procedures are addressed in SBA's IRFA. The primary impact of this interim rule is expected to be the increase in contract awards to qualified firms and a corresponding decrease in contract awards to firms that are not qualified as SDBs.

Within the constraints imposed by the need to implement the DOJ-proposed reforms, the rule was crafted throughout to select alternatives that would minimize any adverse economic impact on small business.

A copy of the IRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) applies because the interim rule contains reporting and recordkeeping requirements. Requests for approval of new and revised information collection requirements were submitted to the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The information collections required by this rule were approved under clearance 9000–0007 through June 30, 2000, and 9000–0150 through June 30, 2000. Public comments concerning this request were invited through a **Federal Register** notice published on May 9, 1997. No comments were received.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to allow adequate time for the significant number of potential SDB subcontractors to understand the requirements of the rule and to be certified as SDB's by SBA. The rule will conform the FAR to the model program designed by the Department of Justice to ensure compliance with Constitutional standards established by the Supreme Court and, thereby, avoid unnecessary litigation. A proposed FAR rule on this subject was published for public comment at 62 FR 25786 on May 9, 1997. As a result of public comments received in response to the proposed rule, changes have been made to the rule. This interim rule would qualify for publication as a final rule; however, further public comments are requested. Pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 12, 15, 19, 52, and 53

Government procurement.

Dated: June 23, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

FAC 97–07

Federal Acquisition Circular (FAC) 97–07 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

The policies, provisions, and clauses of this interim rule are effective for all solicitations issued on or after January 1, 1999.

Dated: June 17, 1998.

R.D. Kerrins,

Col, USA, Deputy Director, Defense Procurement.

Dated: June 16, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: June 17, 1998.

Deidre A. Lee,

Associate Administrator for Procurement, NASA.

Therefore, 48 CFR Parts 1, 12, 15, 19, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 12, 15, 19, 52, and 53 continues to read as follows:

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by adding, in numerical order, the following entries:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
19.12	9000–0150
* * * * *	
52.219–25	9000–0150
* * * * *	
OF 312	9000–0150
* * * * *	

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Section 12.303(b)(1) is revised to read as follows:

12.303 Contract format.

* * * * *

(b) * * *

(1) Block 10 if a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage), or if set aside for emerging small businesses;

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.304 is amended by adding paragraph (c)(4) to read as follows:

15.304 Evaluation factors and significant subfactors.

* * * * *

(c) * * *

(4) The extent of participation of small disadvantaged business concerns in performance of the contract shall be evaluated in unrestricted acquisitions expected to exceed $500,000 ($1,000,000 for construction) subject to certain limitations (see 19.201 and 19.1202).

* * * * *

5. Section 15.305 is amended by adding paragraph (a)(2)(v) to read as follows:

15.305 Proposal evaluation.

(a) * * *

(2) * * *

(v) The evaluation should include the past performance of offerors in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see Subpart 19.7), monetary targets for SDB participation (see 19.1202), and notifications submitted under 19.1202–4(b).

* * * * *

6. Section 15.503 is amended in paragraph (a)(2) by revising the first sentence to read as follows:

15.503 Notifications to unsuccessful offerors.

(a) * * *

(2) *Preaward notices for small business programs.* In addition to the notice in paragraph (a)(1) of this section, when using a small business set-aside (see Subpart 19.5), or when a small disadvantaged business concern receives a benefit based on its disadvantaged status (see Subpart 19.11 and 19.1202) and is the apparently successful offeror, upon completion of negotiations and determinations of

responsibility, and completion of the process in 19.304(d), if necessary, but prior to award, the contracting officer shall notify each offeror in writing of the name and address of the apparently successful offeror. * * *

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

7. Section 19.000 is amended at the end of paragraph (a)(7) by removing ''and''; in paragraph (a)(8) by removing the period and inserting ''; and'' in its place; and by adding paragraph (a)(9) to read as follows:

19.000 Scope of part.

(a) * * *

(9) The Small Disadvantaged Business Participation Program.

* * * * *

19.001 Definitions.

8. Section 19.001 is amended by revising the definition of ''Small disadvantaged business concern'' to read as follows:

19.001 Definitions.

* * * * *

Small disadvantaged business concern, as used in this part, means (except for 52.212–3(c)(2) and 52.219–1(b)(2) for general statistical purposes and 52.212–3(c)(7)(ii), 52.219–22(b)(2), and 52.219–23(a) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns) an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration; or

(2) For prime contractors, it has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, a contractor must receive certification as an SDB by the SBA prior to contract award.

* * * * *

9. Section 19.201 is amended by revising paragraph (b) to read as follows:

19.201 General policy.

* * * * *

(b) The Department of Commerce will determine on an annual basis, by Major Groups as contained in the Standard Industrial Classification (SIC) manual, and region, if any, the authorized small disadvantaged business (SDB) procurement mechanisms and applicable factors (percentages). The Department of Commerce determination shall only affect solicitations that are issued on or after the effective date of the determination. The effective date of the Department of Commerce determination shall be no less than 60 days after its publication date. The Department of Commerce determination shall not affect ongoing acquisitions. The SDB procurement mechanisms are a price evaluation adjustment for SDB concerns (see Subpart 19.11), an evaluation factor or subfactor for participation of SDB concerns (see 19.1202), and monetary subcontracting incentive clauses for SDB concerns (see 19.1203). The Department of Commerce determination shall also include the applicable factors, by SIC Major Group, to be used in the price evaluation adjustment for SDB concerns (see 19.1104). The authorized procurement mechanisms shall be applied consistently with the policies and procedures in this subpart. The agencies shall apply the procurement mechanisms determined by the Department of Commerce. The Department of Commerce, in making its determination, is not limited to the SDB procurement mechanisms identified in this section where the Department of Commerce has found substantial and persuasive evidence of—

(1) A persistent and significant underutilization of minority firms in a particular industry, attributable to past or present discrimination; and

(2) A demonstrated incapacity to alleviate the problem by using those mechanisms.

* * * * *

10. Section 19.304 is amended in the introductory text of paragraph (c) by revising the second sentence to read as follows:

19.304 Disadvantaged business status.

* * * * *

(c) * * * The mechanisms that may provide benefits on the basis of disadvantaged status as a prime contractor are a price evaluation adjustment for SDB concerns (see Subpart 19.11), and an evaluation factor or subfactor for SDB participation (see 19.1202).

* * * * *

11. Section 19.305 is amended in paragraph (a) by revising the last sentence to read as follows:

19.305 Protesting a representation of disadvantaged business status.

(a) * * * An offeror, the contracting officer, or the SBA may protest the apparently successful offeror's representation of disadvantaged status if the concern is eligible to receive a benefit based on its disadvantaged status (see Subpart 19.11 and 19.1202).

* * * * *

12. Section 19.306 is amended by revising paragraph (b) to read as follows:

19.306 Solicitation provisions.

* * * * *

(b) The contracting officer shall insert the provision at 52.219–22, Small Disadvantaged Business Status, in solicitations that include the clause at 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or 52.219–25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting.

* * * * *

13. Section 19.703 is amended by revising paragraphs (a)(2) and (b) to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) * * *

(2) In connection with a subcontract, or a requirement for which the apparently successful offeror received an evaluation credit for proposing one or more SDB subcontractors, the contracting officer or the SBA may protest the disadvantaged status of a proposed subcontractor. Such protests will be processed in accordance with 13 CFR 124.1015 through 124.1022. Other interested parties may submit information to the contracting officer or the SBA in an effort to persuade the contracting officer or the SBA to initiate a protest. Such protests, in order to be considered timely, must be submitted to the SBA prior to completion of performance by the intended subcontractor.

(b) A contractor acting in good faith may rely on the written representation

of its subcontractor regarding the subcontractor's status as a small business concern or a woman-owned small business concern. The contractor shall obtain representations of small disadvantaged status from subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at 52.219–22, Small Disadvantaged Business Status. A contractor shall confirm that a subcontractor representing itself as a small disadvantaged business concern is listed on the SBA's list of SDBs by accessing the list at http://www.sba.gov or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1601 through 121.1608. Protests challenging a subcontractor's small disadvantaged business representation shall be filed in accordance with 13 CFR 124.1015 through 124.1022.

14. Section 19.705–1 is amended by inserting the following sentence after the first sentence to read as follows:

19.705–1 General support of the program.

* * * This subsection does not apply to SDB subcontracting (see 19.1203). * * *

19.705–4 [Amended]

15. Section 19.705–4 is amended in the last sentence of paragraph (c) by removing ‘‘, small disadvantaged’’.

19.708 [Amended]

16. Section 19.708 is amended in the first sentence of paragraphs (c)(1), (c)(2), and (c)(3) by removing ‘‘, small disadvantaged’’.

17. Subpart 19.12, consisting of sections 19.1201 through 19.1204, is added to read as follows:

Subpart 19.12—Small Disadvantaged Business Participation Program

19.1201 General.
19.1202 Evaluation factor or subfactor.
19.1202–1 General.
19.1202–2 Applicability.
19.1202–3 Considerations in developing an evaluation factor or subfactor.
19.1202–4 Procedures.
19.1203 Incentive subcontracting with small disadvantaged business concerns.
19.1204 Solicitation provisions and contract clauses.

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Subpart 19.12—Small Disadvantaged Business Participation Program

19.1201 General.

This subpart addresses the evaluation of the extent of participation of small disadvantaged business (SDB) concerns in performance of contracts in the Standard Industrial Classification (SIC) Major Groups as determined by the Department of Commerce (see 19.201(b)), and to the extent authorized by law. Two mechanisms are addressed in this subpart—

(a) An evaluation factor or subfactor for the participation of SDB concerns in performance of the contract; and

(b) An incentive subcontracting program for SDB concerns.

19.1202 Evaluation factor or subfactor.

19.1202–1 General.

The extent of participation of SDB concerns in performance of the contract, in the SIC Major Groups as determined by the Department of Commerce, and to the extent authorized by law, shall be evaluated consistent with this section. Participation in performance of the contract includes joint ventures, teaming arrangements, and subcontracts. Credit under the evaluation factor or subfactor is not available to SDB concerns that receive a price evaluation adjustment under Subpart 19.11. If an SDB concern waives the price evaluation adjustment at Subpart 19.11, participation in performance of that contract includes the work expected to be performed by the SDB concern at the prime contract level.

19.1202–2 Applicability.

(a) Except as provided in paragraph (b) of this subsection, the extent of participation of SDB concerns in performance of the contract in the authorized SIC Major Groups shall be evaluated in competitive, negotiated acquisitions expected to exceed $500,000 ($1,000,000 for construction).

(b) The extent of participation of SDB concerns in performance of the contract in the authorized SIC Major Groups (see paragraph (a) of this subsection) shall not be evaluated in—

(1) Small business set-asides (see Subpart 19.5);

(2) 8(a) acquisitions (see Subpart 19.8);

(3) Negotiated acquisitions where the lowest price technically acceptable source selection process is used (see 15.101–2); or

(4) Contract actions that will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

19.1202–3 Considerations in developing an evaluation factor or subfactor.

In developing an SDB participation evaluation factor or subfactor, agencies may consider—

(a) The extent to which SDB concerns are specifically identified;

(b) The extent of commitment to use SDB concerns (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(c) The complexity and variety of the work SDB concerns are to perform;

(d) The realism of the proposal;

(e) Past performance of offerors in complying with subcontracting plan goals for SDB concerns and monetary targets for SDB participation; and

(f) The extent of participation of SDB concerns in terms of the value of the total acquisition.

19.1202–4 Procedures.

(a) The solicitation shall describe the SDB participation evaluation factor or subfactor. The solicitation shall require offerors to provide, with their offers, targets, expressed as dollars and percentages of total contract value, in each of the applicable, authorized SIC Major Groups, and a total target for SDB participation by the contractor, including joint venture partners, and team members, and a total target for SDB participation by subcontractors. The solicitation shall require an SDB offeror that waives the SDB price evaluation adjustment in the clause at 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, to provide with its offer a target for the work that it intends to perform as the prime contractor. The solicitation shall state that any targets will be incorporated into and become part of any resulting contract. Contractors with SDB participation targets shall be required to report SDB participation.

(b) When an evaluation includes an SDB participation evaluation factor or subfactor that considers the extent to which SDB concerns are specifically identified, the SDB concerns considered in the evaluation shall be listed in the contract, and the contractor shall be required to notify the contracting officer of any substitutions of firms that are not SDB concerns.

19.1203 Incentive subcontracting with small disadvantaged business concerns.

The contracting officer may encourage increased subcontracting opportunities in the SIC Major Groups as determined by the Department of Commerce for SDB

concerns in negotiated acquisitions by providing monetary incentives (see the clause at 52.219–26, Small Disadvantaged Business Participation Program Incentive Subcontracting, and 19.1204(c)). Monetary incentives shall be based on actual achievement as compared to proposed monetary targets for SDB subcontracting. The incentive subcontracting program is separate and distinct from the establishment, monitoring, and enforcement of SDB subcontracting goals in a subcontracting plan.

19.1204 Solicitation provisions and contract clauses.

(a) The contracting officer may insert a provision substantially the same as the provision at 52.219–24, Small Disadvantaged Business Participation Program Targets, in solicitations that consider the extent of participation of SDB concerns in performance of the contract. The contracting officer may vary the terms of this provision consistent with the policies in 19.1202–4.

(b) The contracting officer shall insert the clause at 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, in solicitations and contracts that consider the extent of participation of SDB concerns in performance of the contract.

(c) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts containing the clause at 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, a clause substantially the same as the clause at 52.219–26, Small Disadvantaged Business Participation Program—Incentive Subcontracting, when authorized (see 19.1203). The contracting officer may include an award fee provision in lieu of the incentive; in such cases, however, the contracting officer shall not use the clause at 52.219–26.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–2 [Amended]

18. Section 52.212–2 is amended by revising the provision date to read ''(Jan 1999)''; and in the parenthetical following paragraph (a) of the provision by inserting ''; (iv) small disadvantaged business participation;'' after ''(see FAR 15.304)''.

19. Section 52.212–3 is amended by revising the provision date; and the introductory text of paragraph (c)(7) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Jan. 1999)

* * * * *

(c) * * *

(7) (Complete only if the solicitation contains the clause at FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.)

* * * * *

20. Section 52.212–5 is amended by revising the clause date; redesignating paragraphs (b)(7) through (b)(18) as (b)(9) through (b)(20), respectively; and adding new paragraphs (b)(7) and (b)(8) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Jan. 1999)

* * * * *

(b) * * *

_____ (7) 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

_____ (8) 52.219–26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

* * * * *

21. Section 52.219–8 is amended by revising the clause date and paragraph (c) to read as follows:

52.219–8 Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns.

* * * * *

Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns (Jan. 1999)

* * * * *

(c) As used in this contract, the term ''small business concern'' shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term ''small business concern owned and controlled by socially and economically disadvantaged individuals'' means an offeror that represents, as part of its offer, that—

(1) It is a small business under the size standard applicable to the acquisition;

(2) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;

(3) No material change in disadvantaged ownership and control has occurred since its certification;

(4) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(5) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration.

* * * * *

22. Section 52.219–9 is amended by revising the clause date and paragraphs (d)(5), and (d)(10)(iii); and by adding paragraph (j) to read as follows:

52.219–9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

* * * * *

Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Jan. 1999)

* * * * *

(d) * * *

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Marketing and Assistance Network (PRONET) of the Small Business Administration (SBA), the list of certified small disadvantaged business concerns of the SBA, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRONET as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small and women-owned small business source list. A firm shall rely on the information contained in SBA's list of small disadvantaged business concerns as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small disadvantaged business source list. Use of PRONET and/or the SBA list of small disadvantaged business concerns as its source lists does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(10) * * *

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and

* * * * *

(j) The Contractor shall submit the following reports:

(1) *Standard Form 294, Subcontracting Report for Individual Contracts.* This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) *Standard Form 295, Summary Subcontract Report*. This report encompasses all the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

(End of clause)

* * * * *

52.219–10 [Amended]

23. Section 52.219–10 is amended by revising the clause date to read ''(Jan. 1999)''; and in the first sentence of paragraph (b) of the clause by inserting ''for small business concerns and women-owned small business concerns'' after the word ''goals''.

24. Sections 52.219–24 through 52.219–26 are added to read as follows:

52.219–24 Small Disadvantaged Business Participation Program—Targets.

As prescribed in 19.1204(a), insert a provision substantially the same as the following:

Small Disadvantaged Business Participation Program—Targets (Jan. 1999)

(a) This solicitation contains a source selection factor or subfactor related to the participation of small disadvantaged business (SDB) concerns in the contract. Credit under that evaluation factor or subfactor is not available to an SDB concern that qualifies for a price evaluation adjustment under the clause at FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, unless the SDB concern specifically waives the price evaluation adjustment.

(b) In order to receive credit under the source selection factor or subfactor, the offeror must provide, with its offer, targets, expressed as dollars and percentages of total contract value, for SDB participation in any of the Standard Industrial Classification (SIC) Major Groups as determined by the Department of Commerce. The targets may provide for participation by a prime contractor, joint venture partner, teaming arrangement member, or subcontractor; however, the targets for subcontractors must be listed separately.

(End of provision)

52.219–25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.

As prescribed in 19.1204(b), insert the following clause:

Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Jan. 1999)

(a) *Disadvantaged status for joint venture partners, team members, and subcontractors*. This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219–22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern is included in the SBA's on-line list of SDBs at http://www.sba.gov or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(b) *Reporting requirement*. If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

(End of clause)

52.219–26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

As prescribed in 19.1204(c), insert a clause substantially the same as the following:

Small Disadvantaged Business Participation Program—Incentive Subcontracting (Jan. 1999)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its offer to try to award a certain amount to small disadvantaged business concerns in the Standard Industrial Classification (SIC) Major Groups as determined by the Department of Commerce.

(b) If the Contractor exceeds its total monetary target for subcontracting to small disadvantaged business concerns in the authorized SIC Major Groups, it will receive _____ [*Contracting Officer to insert the appropriate number between 0 and 10*] percent of the dollars in excess of the monetary target, unless the Contracting Officer determines that the excess was not due to the Contractor's efforts (*e.g.*, a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the offer, or the excess was caused by the award of subcontracts that had been planned but had not been disclosed in the offer during contract negotiations). Determinations made under this paragraph are not subject to the Disputes clause of this contract.

(c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in subsection 15.404–4 of the Federal Acquisition Regulation.

(End of clause)

PART 53—FORMS

25. Section 53.219 is amended by adding paragraph (c) to read as follows:

53.219 Small business programs.

* * * * *

(c) *OF 312 (1/99), Small Disadvantaged Business Participation Report*. (See Subpart 19.12.)

26. Section 53.302–312 is added to read as follows:

53.302–312 OF 312, Small Disadvantaged Business Participation Report.

BILLING CODE 6820–EP–U

SMALL DISADVANTAGED BUSINESS (SDB) PARTICIPATION REPORT	OMB No.: 9000-0150 Expires: 06/30/2000	PAGE OF PAGES

Public reporting burden for this collection of information is estimated to average 8.66 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1A. CONTRACTOR'S NAME	2. CONTRACT NUMBER		
1B. CONTRACTOR'S ADDRESS	3. TOTAL PARTICIPATION OF SDBs IN THE CONTRACT ($)		
	4. SDB PARTICIPATION AT PRIME CONTRACT LEVEL		
	A. SIC MAJOR GROUP	B. DOLLAR AMOUNT	C. PERCENTAGE

5. BREAKDOWN OF SDB PARTICIPATION AT SUBCONTRACT LEVEL BY SIC MAJOR GROUP

A. SIC MAJOR GROUP	B. DOLLARS	C. PERCENT	A. SIC MAJOR GROUP	B. DOLLARS	C. PERCENT

6. PREPARED BY

A. NAME OF INDIVIDUAL			B. DATE PREPARED
C. TELEPHONE NUMBER			D. E-MAIL ADDRESS
AREA CODE	NUMBER	EXTENSION	

AUTHORIZED FOR LOCAL REPRODUCTION

OPTIONAL FORM 312 (1-99)
Prescribed by GSA/FAR (48 CFR) 53.219(c)

GENERAL INFORMATION INSTRUCTIONS

1. This form collects data on the participation of small disadvantaged business concerns in contracts that contain the clause at FAR 52.219-25, Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting.

2. Submit this report to the contracting officer. If your organization is required to report subcontracting data under an individual subcontracting plan, you may attach this report to the final SF 294, Subcontracting Report for Individual Contracts, submitted under the contract.

3. Report in whole dollars.

SPECIFIC INSTRUCTIONS

Block 3. Report the total dollar amount of participation of small disadvantaged business concerns under the contract cited in Block 2. Participation may be through subcontracting, teaming arrangement, joint ventures, or as the prime contractor (provided the prime contractor waived its right to a price evaluation adjustment).

Block 4. Report the participation, if any, by small disadvantaged business concerns in this contract at the prime contract level. All prime contract dollars must be reported under the SIC code assigned to the prime contract. Report the dollar amount and percentage of the total contract value.

Block 5. Report, by SIC Major Group, as determined by the Department of Commerce, the participation by small disadvantaged business concerns in this contract at the subcontract level. Report the dollar amount and percentage of the total contract value.

Block 6. Provide the name, telephone number, and e-mail address of the individual who can answer questions related to this report.

OPTIONAL FORM 312 1-99 BACK

[FR Doc. 98–17298 Filed 6–30–98; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulatory Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 97–07 which amends the Federal Acquisition Regulation (FAR). Further information regarding this rule may be obtained by referring to FAC 97–07 which precedes this notice. This document may be obtained from the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501–4755.

Reform of Affirmative Action in Federal Procurement

FAC 97–07/FAR Case 97–004B. This interim rule amends FAR Parts 1, 12, 14, 15, 19, 52, and 53 to establish two mechanisms to benefit small disadvantaged business concerns at the subcontract level. The first mechanism is a source selection evaluation factor or subfactor for planned SDB participation, primarily at the subcontract level, in the performance of a contract in the SIC Major Groups as determined by the Department of Commerce. This evaluation factor or subfactor will be used in competitive, negotiated acquisitions expected to exceed $500,000 ($1,000,000 for construction). This mechanism will not be applied to certain major categories of acquisition, including, for example, small business set-asides, 8(a) acquisitions, and acquisitions using the lowest price technically acceptable source selection process.

The second mechanism provides for a monetary incentive for subcontracting with SDBs. Contracts resulting from solicitations in which SDB participation is evaluated may provide for a monetary payment to those prime contractors that meet specified targets for SDB participation as subcontractors in the SIC Major Groups as determined by the Department of Commerce.

These mechanisms conform to the Department of Justice proposal to reform affirmative action in Federal procurement and to regulations issued by the Small Business Administration regarding small disadvantaged business programs.

The interim rule also adds to the FAR a requirement to evaluate the past performance of offerors in complying with targets for SDB participation and subcontracting plan goals for SDBs whenever past performance is to be evaluated.

Dated: June 23, 1998

Edward C. Loeb,

Director,

Federal Acquisition Policy Division.

[FR Doc. 98–17299 Filed 6–30–98; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Wednesday
July 1, 1998

Part V

Department of Housing and Urban Development

Portfolio Reengineering—Fiscal Year 1998 Transition Program Guidelines; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4162–N–03]

Portfolio Reengineering—Fiscal Year 1998 Transition Program Huidelines

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of guidelines.

SUMMARY: HUD is currently implementing a statutory demonstration program authorized for fiscal year (FY) 1997. The Demonstration Program is directed at FHA-insured multifamily projects that have project-based Section 8 contracts with rents in excess of 120 percent of fair market rents. That program has been extended by Congress through FY 1998 with certain modifications as a transitional program while HUD develops regulations to implement the new authority for a non-demonstration FHA-insured mortgage and rental assistance restructuring program.

This notice provides guidelines for the FY 1998 Transition Program. It also identifies projects that will continue to proceed under the FY 1997 Demonstration Program unmodified by these transitional provisions. Finally, it clarifies HUD policy concerning delegation of responsibilities to joint venture designees. This clarification applies to both the FY 1998 Transition Program and the FY 1997 Demonstration Program.

FOR FURTHER INFORMATION CONTACT: Dan Sullivan, Housing Project Manager, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–4000; Room 6106; Telephone (202) 708–2300, ext. 2062. (This is not a toll-free number.) Hearing or speech-impaired individuals may call 1–800–877–8399 (Federal Information Relay Service TTY). Internet address: Dan__Sullivan@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

Paperwork Reduction Act Statement

The information collection requirements contained in this notice and in the notice published on January 23, 1997, at 62 FR 3566 have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0519. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Background

The FY 1997 Demonstration Program was authorized by sections 211 and 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (FY 1997 Appropriations Act) (Pub. L. 104–204; 110 Stat. 2874, 2895–2904; approved September 26, 1996). HUD is currently implementing the FY 1997 program under Guidelines published on January 23, 1997, at 62 FR 3566. (See also FY 1997 Portfolio Reengineering Request for Qualifications published on July 16, 1997, at 62 FR 38109.)

The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) was enacted in title V of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (FY 1998 Appropriations Act) (Pub. L. 105–65; 111 Stat. 1344, 1384; approved October 27, 1997). Subtitle A of MAHRA contains the FHA-Insured Multifamily Housing Mortgage and Housing Assistance Restructuring Program. That program provides authority to deal with Section 8 contract expirations occurring in FY 1999 and later. In accordance with section 522(a) of MAHRA, the new non-demonstration program will be initially implemented by an interim rule to be followed by a final rule.

Section 522(b) of MAHRA contains transition provisions for projects with Section 8 contracts expiring in FY 1998. For these projects, the transition provisions direct HUD to apply all the terms of sections 211 and 212 of the HUD FY 1997 Appropriations Act except for two provisions in section 212. First, the 50,000 unit limitation in section 212(k) does not apply. Second, the mortgage restructuring provisions in section 212(h)(1)(G) do not apply. In addition, HUD is directed to apply section 517(a), Mortgage Restructuring, of MAHRA.

Section 517(a) provides for a new second mortgage loan program from HUD that is available to eligible project owners as part of a prepayment on the existing unpaid principal balance on the first mortgage so that the restructured or new first mortgage is sustainable at rents determined under section 514(g) of MAHRA. The amount of the second mortgage cannot be more than the difference between the restructured or new first mortgage and the indebtedness under the existing insured mortgage. The second mortgage is further limited to an amount that can reasonably be expected to be repaid.

Section 517(a) contains other requirements for the second mortgage, including a requirement that at least 75 percent of excess project income be applied to the second mortgage note.

Section 514(g), which, as noted above, is used in determining the amount of the restructured or new first mortgage, in general, requires the use of market rents based on at least two comparable properties, or, if those rents cannot be determined, on 90 percent of the applicable fair market rents. Section 514(g) also authorizes budget-based exception rents. In general, such rents cannot exceed 120 percent of fair market rent (FMR). Up to 5 percent of the units subject to mortgages restructured in a fiscal year may have rents that exceed this limit based on a finding of special need.

Under the transition program there are two statutory bases for debt forgiveness and two statutory bases for providing budget-based rents. Debt forgiveness can be authorized under section 212(h)(1)(H) and also under section 517(a) but only when application of the ''reasonably be expected to be repaid'' limitation results in a second mortgage that is less than the amount required to pay down the first mortgage to a sustainable level. Budget-based rents are authorized under section 212(h)(1)(I) and, as discussed above, under the exception rent provisions in section 514(g)(2) and (3).

These Guidelines implement all of these authorities in a manner that is consistent with overall statutory requirements, and in particular, with the requirement in section 522(b) to apply section 517(a).

III. Projects Continuing Under the FY 1997 Demonstration Program

Any project covered by a Demonstration HAP Contract that was executed on or before September 30, 1997 shall continue to be processed under the provisions of the January 23, 1997 Guidelines unmodified by section IV. of today's **Federal Register** notice. Certain of these Demonstration HAP Contracts may be extended for a period not to exceed 120 days in accordance with section 212(g)(2) of the FY 1997 Appropriations Act, as added by section 523(f) of MAHRA. Section 212(g)(2) authorizes these extensions for contracts originally executed before February 1, 1997 and for contracts originally executed before October 1, 1997 in connection with a restructuring under the joint venture approach, if HUD, in its sole discretion, determines that the renewal period needs to exceed one year

(i) for the pre-February 1, 1997 contracts, due to the delay in publishing the January 23, 1997 Guidelines and (ii) for the pre-October 1, 1997 contracts, due to a delay in implementation of the joint venture agreement. The two categories described involve not more than 21 and 25 projects, respectively. A project continuing under the FY 1997 Demonstration Program is not subject to the FY 1998 Transition Program Guidelines (see section IV. of this notice), but is subject to the revision to joint venture designee policy in section V. of this notice.

IV. FY 1998 Transition Program Guidelines

A. Applicability of the January 23, 1997 Guidelines

Because MAHRA applies almost all of the statutory provisions for the FY 1997 Demonstration Program to the FY 1998 Transition Program, sections IV. through IX. of the January 23, 1997 Guidelines (62 FR 3569–3581), as augmented by this notice, constitute the FY 1998 Transition Program Guidelines. Except for statutory references, all references in sections IV. through IX. of the January 23, 1997 Guidelines to ''FY 1997'' mean ''FY 1998.''

In section III.B. of the January 23, 1997 Guidelines (62 FR 3568), the definitions of ''FMR'' and ''in the aggregate'' apply to the FY 1998 Transition Program.

B. General Eligibility

This section IV.B. applies instead of section IV.B.1., General Eligibility, of the January 23, 1997 Guidelines (62 FR 3569). For a project to be eligible for the FY 1998 Demonstration Program, the owner must agree to participate. The project must be subject to an FHA-insured mortgage and supported by project-based Section 8 Housing Assistance Payments (HAP) contracts with rent levels which, in the aggregate, exceed 120 percent of FMR. In managing its workload, HUD will give preference to projects with contracts expiring in FY 1998.

C. Disqualified Owner

The following conforms the Guidelines to the amendment to section 211(b)(4)(B) of the HUD FY 1997 Appropriations Act made by section 10006 of the 1997 Emergency Supplemental Appropriations Act, Pub. L. 105–18; 111 Stat. 158; approved June 12, 1997 which added ''affiliate of the owner'' to the definition of ''owner.'' In section IV.C.3. of the January 23, 1997 Guidelines (62 FR 3569), Disqualified Owners, the term *owner* also means an affiliate of the owner and the term *purchaser* also means an affiliate of the purchaser. The terms *affiliate of the owner* and *affiliate of the purchaser* mean any person or entity (including but not limited to, a general partner or managing member, or an officer of either) that controls an owner or purchaser, is controlled by an owner or purchaser, or is under common control with the owner or purchaser. The term *control* means the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of the owner or purchaser.

D. Demonstration Approaches/ Underwriting

1. Mandatory FY 1998 Transition Program Approaches

This section applies in place of the guidance in sections IV.E.1., Mandatory Demonstration Approaches, through and including section IV.E.1.b., Debt Forgiveness, of the January 23, 1997 Guidelines (62 FR 3569–3571).

With respect to any eligible project, HUD must perform an analysis under section 517(a)(1)(B) of MAHRA. HUD is obligated to require a new second mortgage to the extent that it makes a determination that a new second mortgage can reasonably be expected to be repaid.

To the extent that the combination of the new first mortgage and the new second mortgage is less than the outstanding principal balance of the existing insured mortgage, immediately before it is restructured or refinanced, HUD will consider debt forgiveness or budget basing, or a combination of these, pursuant to sections 212(h)(1)(H) and 212(h)(1)(I) and sections 514(g)(2) and (3) and 517(a).

a. Mortgage Restructuring.

Under the Mortgage Restructuring approach, the unpaid principal balance (UPB) on the existing FHA-insured mortgage loan is paid down to, or refinanced by a new first mortgage at, an amount equal to the Supportable Debt. The reduction in the first mortgage UPB is effected by an advance of funds from HUD. This advance is secured, in whole or in part, by a second mortgage note. The portion of the advance that is secured by the second mortgage cannot exceed the amount that HUD determines can reasonably be expected to be repaid.

(1) Supportable First Mortgage Loan

The amount of the UPB of the supportable first mortgage loan after restructuring is determined by applying a 1.10 or greater debt service coverage ratio, at the interest rate and term approved by HUD, to the adjusted NOI. The amount may, at HUD's option, be adjusted if the security for the existing FHA-insured loan includes vacant land or other non-income producing assets with additional market value. HUD will require that the restructured or new first mortgage carry an interest rate and term that is competitive in the market.

(2) Second Mortgage Loan.

The initial unpaid principal balance of the second mortgage loan will equal the lesser of:

(a) The amount required to pay down the existing FHA-insured mortgage loans(s) to a sustainable level; or

(b) An amount HUD determines can reasonably be expected to be repaid.

The second mortgage loan shall bear interest at a rate less than or equal to the long term applicable Federal rate, as set forth pursuant to section 1274(d) of the Internal Revenue Code of 1986 (26 U.S.C. 1274(d)). The term of the second mortgage shall be equal to the term of the restructured or new first mortgage.

The interest rate and payment and other terms of the loan will be established by HUD, consistent with section 517(a) of MAHRA. Principal and interest on the second mortgage loan will be payable out of Net Cash Flow (discussed below), and unpaid interest will accrue.

(3) Debt Forgiveness.

HUD may forgive a certain portion of the outstanding balance of an existing FHA-insured loan to the extent HUD determines that a second mortgage cannot reasonably be expected to be repaid.

(i) Amount of Debt Forgiveness.

The amount of the debt that may be forgiven is equal to—

(a) If HUD will make a second mortgage loan, the outstanding UPB of the existing FHA-insured mortgage loan(s) at the time of restructuring minus the sum of UPB of the restructured or new first mortgage and the UPB of the second mortgage loan determined under section IV.D.1.a.(2) of this notice; or

(b) If there will be no second mortgage loan from HUD, the outstanding UPB of the existing FHA-insured mortgage loan(s) at the time of restructuring minus the market value. The project's ''market value'' will be determined based upon an appraisal of the project's as-is value prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal will take into consideration, among other factors, the current market rents for unsubsidized units in the local market area, the project's current operating expenses, any necessary reserves for long term capital

replacements, any necessary rehabilitation costs (see section IV.E.2.b.(1)(c), Determining the Level of Required Physical Improvements, of the January 23, 1997 Guidelines (62 FR 3572)), and any anticipated costs relating to the transition of the project to market rents.

(4) Restructuring Payment.

The amount of the restructuring payment made by HUD shall equal the UPB of the existing FHA-insured mortgage loan(s) minus (i) the supportable debt, (ii) all contributions made by the owner (and the owner's partners/investors) in connection with the restructuring, as determined by HUD, and (iii) all excess funds in the project's reserve for replacement account, and (iv) all funds in the project's residual receipts account and any other escrows and reserves, as determined by HUD, plus (v) reasonable, cost effective rehabilitation costs approved by HUD, and (vi) reasonable transaction costs approved by HUD.

(5) Use of Net Cash Flow.

For purposes of the Mortgage Restructuring approach, ''Net Cash Flow'' means that portion of the NOI that remains after the payment of all required debt service payments on the first mortgage loan. Net Cash Flow shall be applied as follows: *first,* to payment to the holder of the first mortgage loan of any past due principal or interest, and required escrows and reserves, on such mortgage loan; *second,* to the extent of the remaining Net Cash Flow to any other expenditures approved by HUD; and *third,* to the extent of the remaining Net Cash Flow, to be distributed with at least 75 percent to payment of principal and interest due on the second mortgage and up to 25 percent to an escrow account for payment to the owner after the requirements of section IV.D.2. of this notice have been met.

(6) Funding of Rehabilitation Costs.

If the FHA-insured mortgage loan will be refinanced with non-FHA-insured financing, the HUD-approved rehabilitation costs will be financed with funds available in the project's residual receipts account and excess funds in the project's reserve for replacements account, as of the date of the mortgage restructuring. If the rehabilitation costs exceed the amount of such funds, the rehabilitation costs may be funded by (a) a contribution of cash equity from the owner's partners/investors, and/or (b) the proceeds of the non-FHA-insured refinancing loan, and (c) to the extent that other sources of funds are unavailable, and at HUD's sole discretion, through a loan or grant from HUD.

If the FHA-insured mortgage loan is retained or refinanced with another FHA-insured loan, the HUD approved rehabilitation costs will be financed with funds available in the project's residual receipts account and excess funds in the project's reserve for replacements account, as of the date of the mortgage restructuring. If the rehabilitation costs exceed the amount of such funds, the rehabilitation costs may be funded by (1) a contribution of cash equity from the owner's partners/investors, (2) the proceeds of a non-FHA-insured rehabilitation loan, (3) the proceeds of an FHA-insured rehabilitation loan, and/or (4) to the extent that other sources of funds are unavailable, through a loan or grant from HUD.

For owners who want to refinance the original FHA-insured loan, mortgage insurance from the following FHA programs may be provided:

(a) Section 223(f), acquisition and refinance with limited renovations—loan to value limit of 85 percent; or

(b) Section 223(a)(7), refinance of an insured loan to lower the interest rate and to fund rehabilitation costs—loan limit is up to the original insured principal amount.

b. Budget-Based Rents.

The provisions of section IV.E.1.c., Budget-Based Rents, of the January 23, 1997 Guidelines (62 FR 3571) apply, subject to the following. The above referenced Budget-Based Rents provisions implement the authority under section 212(h)(1)(I) of the 1997 Appropriations Acts. Budget-based rents under that authority may not exceed the expiring contract rents, and there is no percentage limitation on the number of units that may receive budget-based rents. Sections 514(g) (2) and (3) of MAHRA also authorize the use of budget-based rents. Those sections have a general limit of 120 percent of FMR but allow up to 5 percent of all units subject to mortgages restructured within the fiscal year to exceed that limit. While there is no express statutory requirement in section 514(g)(2) or (3) limiting budget-based rents to no more than the expiring contracts rents, it is HUD policy to approve budget-based rents only at or below expiring contract rents.

32. Owner's Distribution From Net Cash Flow

This section IV.D.2. applies instead of section IV.E.2.b.(2), Owner's Distribution from Net Cash Flow, of the January 23, 1997 Guidelines (62 FR 3569).

As an incentive to maintain the property the owner may receive an annual distribution of up to 25 percent of Net Cash Flow (''Owner's Distribution'').

The Owner's Distribution will be held in an escrow account and paid to the owner only after HUD or its representative inspects the project and finds that all units are in substantial compliance with maintenance standards set forth by HUD as part of the restructuring agreement. Any owner who fails to deposit all Net Cash Flow to the escrow account will waive its rights to future distributions.

E. Project Underwriting—Market Rents

In estimating a project's net operating income under section IV.E.2.b. of the January 23, 1997 Guidelines (62 FR 3572), market rents will be established through an appraisal of the property that utilizes at least two comparables. If two comparables cannot be found, HUD may authorize the appraiser to use 90 percent of the applicable fair market rents.

F. HUD Housing Notices

The following sections of the January 23, 1997 Guidelines referred to Housing Notice H 96–89, issued October 15, 1996: Sections V.F. (62 FR 3574); V.B.2. (62 FR 3575); VI.D. (62 FR 3576); and VI.L. (62 FR 3577). Housing Notice H 97–66, issued November 12, 1997, reinstates H 96–89 with certain exceptions. The reader should refer to both Housing Notices. They are available through HUDCLIPS, which is on HUD's web site. The location (URL) for the HUDCLIPS Database Selection Screen is http://www.hudclips.org/subscriber/cgi/legis.cgi?legis. These notices are in the Handbooks and Notices—Housing Notices database. Enter only the number without the letter prefix (e.g., 97–96) in the ''Document Number'' to retrieve the program notice.

G. Obsolete Provisions

Section V.G., Funding and Unit Limitations, of the January 23, 1997 Guidelines (63 FR 3574) described limitations as they existed in FY 1997 and does not apply.

Section IX.A., Participation of Projects with Post-FY 1997 Expirations, of the January 23, 1997 Guidelines (62 FR 3581) does not apply. (See section IV.B of today's notice for guidance on preference for projects with contracts expiring in FY 1998.)

H. Sunshine Provision

This section IV.H. applies instead of section X.B., Sunshine Provision, of the January 23, 1997 Guidelines (62 FR

3581). In order that others may learn from the experience of the FY 1998 Transition Program, all proposals accepted by HUD to participate in the FY 1998 Transition Program may be posted on HUD's Web Page (www.hud.gov/fha/mfh/mfhsec8.html). The posted information will include, but not be limited to, the final restructuring commitment, detailed financial information regarding the asset and tenant issues. Owners will be requested to waive the provisions of the Privacy Act (5 U.S.C. 552a) and the Trade Secrets Act (18 U.S.C. 1905).

V. Revision to Joint Venture Designee Policy for Both the FY 1997 Demonstration Program and the FY 1998 Transition Program

Section VII.A. of the January 23, 1997 Guidelines (62 FR 3578, 2d col.) contained a statement encouraging designee applicants to ''develop partnerships with each other as well as with other private and public entities * * *.'' This inaccurately stated the policy set out in section 212(d)(3) of the FY 1997 HUD Appropriations Act. Rather, designee applicants are encouraged to develop partnerships with each other and to contract or subcontract with other private and public entities, including the entities listed in section VII.A. of the January 23, 1997 Guidelines.

Section VII.B.2.a. of the January 23, 1997 Guidelines (62 FR 3580) stated in part, ''It is possible that HUD would delegate all of its powers to the designees including the ability to authorize full or partial mortgage prepayment and would rely solely on a post-restructuring audit to verify that the interests of the Federal Government are fairly represented in the transaction.'' Section VI.B.2.b. of the January 23, 1997 Guidelines (62 FR 3580) stated in part, ''The Joint Venture Designees will be responsible for all decision making. HUD approvals will be based on representations and certifications made by the Designee.'' These two statements do not apply to the FY 1998 Transition Program.

A Joint Venture Designee will be responsible for decision making as set out in its agreement with HUD. All other provisions of section VII. continue to apply to the FY 1997 Demonstration Program and the FY 1998 Transition Program.

VI. HUD Findings and Certifications

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions in this notice are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This notice does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Dated: June 22, 1998.

Art Agnos,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 98–17457 Filed 6–30–98; 8:45 am]

BILLING CODE 4210–27–P

federal register

Wednesday
July 1, 1998

Part VI

Securities and Exchange Commission

17 CFR Parts 230 and 240

Options Disclosure Document; Amendment to Rule 9b–1 Under the Securities Exchange Act Relating to the Options Disclosure Document; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–7550; File No. S7–19–98]

RIN 3235–AH31

Options Disclosure Document

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing to revise Rule 135b under the Securities Act of 1933 to provide that an options disclosure document prepared in accordance with Rule 9b–1 under the Securities Exchange Act of 1934 is not a prospectus and, accordingly, is not subject to civil liability under Section 12(a)(2) of the Securities Act. This proposal is intended to codify a long-standing interpretive position that was issued immediately after the Commission adopted the current registration and disclosure system applicable to standardized options. The proposal also is intended to eliminate any legal uncertainty in this area.

DATES: Comments should be received on or before July 31, 1998.

ADDRESSES: Comment letters should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–19–98; this file number should be included on the subject line if e-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: David Lavan, at (202) 942–1840, Office of Chief Counsel, Division of Corporation Finance, U.S. Securities and Exchange Commission, Mail Stop 3–3, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In order to clarify that an options disclosure document prepared in accordance with Rule 9b–1 [1] under the Securities Exchange Act of 1934 (''Exchange Act'') [2] is not a prospectus for purposes of Section 12(a)(2) [3] of the Securities Act of 1933 (''Securities Act''),[4] the Commission is proposing to revise Rule 135b [5] under the Securities Act.

I. Proposed Amendment

The Commission has a simplified registration and disclosure system for investors in standardized options [6], which the Commission adopted in 1982. [7] Under this system, the issuer of the standardized options (generally a clearing corporation) may register the options under the Securities Act on Form S–20. [8] This form is quite streamlined. It requires limited information about the clearing corporation issuer and the options it issues in a prospectus filed as Part I of the registration statement, and more detailed information (including the issuer's financial statements) in Part II of the registration statement. [9] The options issuer may satisfy its prospectus delivery requirement by delivering the prospectus to each options market on which the options are traded, for the purpose of redelivery to options customers on request. [10]

The disclosure document used to inform investors generally about options is the ''options disclosure document'' (''ODD''). The ODD is prepared by the exchange on which the registered option trades and must meet the requirements of Rule 9b-1 under the Exchange Act. The ODD provides a general description of standardized options and the rules of options trading. The ODD must be delivered to a customer at or before the time that a broker or dealer approves the customer's account for options trading. Typically, the exchanges work closely with the clearing corporation in preparing the ODD. [11]

The Commission adopted this simplified registration and disclosure system in part to reduce the expense of preparing and updating a detailed prospectus, and to provide investors with a document that is easier to read than the options prospectus that investors received before adoption of these rules. [12] Rule 135b under the Securities Act is one rule of this system. This rule provides that an ODD prepared in accordance with Rule 9b-1 under the Exchange Act ''shall not be deemed to constitute an offer to sell or offer to buy any security'' [13] for purposes of Section 5 of the Securities Act. [14] In the Adopting Release, the Commission stated that ''if the disclosure document is deemed not to be an offer to sell or buy, it cannot be deemed to be a prospectus.'' [15] In addition, the Commission stated that Rule 135b ''is intended to relieve the preparers of the disclosure document from liability under Section [12(a)(1)] of the Act for distributing a disclosure document to investors which might, absent such relief, violate Section 5 of the Act.'' [16]

However, Rule 135b and the Adopting Release both are silent as to whether Rule 135b was intended to address liability under Section 12(a)(2) of the Securities Act. Section 12(a)(2) generally imposes civil liability for a prospectus that contains material misstatements or omissions. [17]

Shortly after the Commission adopted the rule, the Options Clearing Corporation (''OCC'') requested interpretive advice from the Division of Corporation Finance (''Division'') regarding the applicability of liability under Section 12(a)(2) of the Securities Act to an ODD. After considering the Adopting Release, the Division advised the OCC that in its view, an ODD ''is not a prospectus within the meaning of

[1] 17 CFR 240.9b–1.

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 77*l*(a)(2) (renumbered). Before the Securities Litigation Reform Act of 1995, Public Law No. 104–67, 109 Stat. 737, this provision was contained in Section 12(2) of the Securities Act.

[4] 15 U.S.C. 77a *et seq.*

[5] 17 CFR 230.135b.

[6] Standardized options are ''options contracts trading on a national securities exchange, an automated quotations system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.'' Rule 9b-1(a)(4) under the Exchange Act [17 CFR 240.9b-1(a)(4)].

[7] Securities Act Release No. 6426 (Sept. 16, 1982) [47 FR 41950] (''Adopting Release'').

[8] 17 CFR 239.20

[9] Information about the companies whose shares underlie the options is not required. Instead, information about these companies is available because these companies are generally required to be reporting companies before options on the shares can be approved for trading on U. S. options markets.

[10] Rule 153b under the Securities Act [17 CFR 230.153b].

[11] *See* Adopting Release.

[12] *Id.; see also* Securities Act Release No. 6494, n.2 (Oct. 27, 1983) [48 FR 51328] (discussing the Commission's 1979 Special Study of the Options Market, which suggested the simplified registration and disclosure scheme).

[13] Securities Act Rule 135b.

[14] 15 U.S.C. 77e. However, as stated in the release that proposed Rule 135b, the ODD is subject to liability under the anti-fraud provisions. Securities Act Release No. 6411 (June 24, 1982) [47 FR 28688] (''Proposing Release'').

[15] Adopting Release at § I.C.

[16] Adopting Release. Because Rule 135b states that Section 5 does not apply to distribution of the ODD, it is clear that Section 12(a)(1) liability is inapplicable because that section provides recourse only for offers or sales made in violation of Section 5. See 15 U.S.C. 77l(a)(1).

[17] Section 12(a)(2) also imposes civil liability for oral communications containing material misstatements or omissions. 15 U.S.C. 77l(a)(2).

Section [2(a)(10)] of the Securities Act and, thus, is not subject to liability under Section [12(a)(2)] of the Securities Act.'' [18]

Despite this long-standing interpretive position, uncertainty exists about the applicability of Section 12(a)(2) liability to an ODD. [19] In response to informal requests from the Chicago Board Options Exchange and the OCC, the Commission believes that it is appropriate and in the public interest to eliminate any uncertainty in this area. Accordingly, the Commission proposes to modify Rule 135b to codify the Division's position that an ODD prepared in accordance with Rule 9b-1 under the Exchange Act is not subject to liability under Section 12(a)(2) because it is not a prospectus. [20]

II. Request for Comment

The Commission seeks comments on any aspect of the proposed amendment to Rule 135b. Any interested persons wishing to submit written comments relating to the rule proposal are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. Comments will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act. [21] Commentators should refer to File No. S7–19–98; this file number should be included on the subject line if E-mail is used.

III. Costs and Benefits of the Proposed Rule Change and its effects on Efficiency, Competition and Capital Formation

The Commission does not anticipate that the proposed amendment will, in and of itself, result in any economic costs. The rule proposal is not intended to change current practice under the federal securities laws. Rather, the proposal is intended to make it clear that an ODD prepared in accordance with Exchange Act Rule 9b-1 is not a prospectus and thus is not subject to liability under Section 12(a)(2) of the Securities Act. By eliminating any uncertainty over the applicability of Section 12(a)(2) liability to an ODD, it is anticipated that the proposal will result in some unquantifiable economic benefits.

However, commentators are encouraged to provide views and data relating to any costs or benefits associated with the rule proposal. In particular, please identify any costs or benefits associated with the rule proposal relating to the preparation of the disclosure document. Will the proposal have no substantial effect as anticipated, or will the proposal result in additional costs and/or benefits? Please describe, and quantify where possible, any foreseeable significant effects. In addition, address whether the proposal will affect the current compliance burden of exchanges or options issuers.

Because the proposed amendment is intended to codify long-standing Commission interpretations, the Commission does not currently believe that the proposed amendments to Rule 135b will impose any additional burdens on competition. Nevertheless, the Commission seeks comments on any anti-competitive effects the rule, as amended, may have.

In addition, by eliminating any uncertainty in this area, the Commission currently believes that the proposed rule amendments will have a positive, but unquantifiable, effect on efficiency, competition and capital formation. The Commission seeks comments on this preliminary view.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposals on the economy on an annual basis. The Commission does not currently believe that the amendments, if adopted, would result or be likely to result in (i) an annual effect on the economy of $100 million or more; (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effects on competition, investment, or innovation. Nevertheless, the Commission solicits comment on this preliminary view. Commentators should provide empirical data to support their views.

IV. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the Chairman of the Commission has certified that the proposal would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release as Appendix A. We encourage written comments on the Certification. Commentators are asked to describe the nature of any impact on small business entities and provide empirical data to support the extent of the impact.

V. Paperwork Reduction Act

Certain sections of Rule 135b contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*). The Commission has previously submitted the rule to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d), and OMB has assigned the rule OMB control number 3235–0200. Because the proposed rule changes should not materially affect the collection of information obligations under the rule, there is no requirement that the Commission resubmit the rule with the proposed amendment to OMB for review under the PRA.

VI. Statutory Bases

The amendment to Securities Act Rule 135b is being proposed pursuant to Sections 2(a)(10), [22] 7, [23] 10, [24] 12, [25] and 19(a) [26] of the Securities Act, as amended.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Text of the Proposal

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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[18] Letter dated September 23, 1982, from then Division of Corporation Finance Director, Lee B. Spencer, Jr. to Mr. Marc L. Berman, then Senior Vice President and General Counsel, of the Options Clearing Corporation. On its face, the text of Rule 135b does not address the applicability of Section 12 liability. In its interpretive letter, the Division noted that the limiting language ''for purposes only of Section 5 of the Act'' appearing in Rule 135b is intended to clarify that the ODD would be subject to the antifraud provisions of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)], but is not intended to suggest that the ODD remains subject to Section 12(a)(2) liability.

[19] *See, e.g., Spicer* v. *Chicago Board Options Exchange*, No. 88 C 2139 (N.D. Ill. Oct. 24, 1990), *motion to reconsider denied* (Jan. 24, 1991) (holding that an ODD that is incorporated by reference as a matter of law into the prospectus could be subject to Section 12(2) [now Section 12(a)(2)] liability).

[20] Of course, the document would continue to be subject to the anti-fraud liability provisions of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)], and Rule 10b-5 under the Exchange Act [17 CFR 240.10b-5]. Thus, the Commission believes that the rule, if amended as proposed, would continue to be consistent with protection of investors.

[21] 15 U.S.C. 77s(a).

[22] 15 U.S.C. 77b(10).

[23] 15 U.S.C. 77g.

[24] 15 U.S.C. 77j.

[25] 15 U.S.C. 77l.

[26] 15 U.S.C. 77s(a).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-24, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Section § 230.135b is revised to read as follows:

§ 230.135b Materials not deemed an offer to sell or offer to buy nor a prospectus.

Materials meeting the requirements of § 240.9b-1 of this chapter shall not be deemed an offer to sell or offer to buy a security for purposes solely of Section 5[27] of the Act, nor shall such materials be deemed a prospectus for purposes of Sections 2(a)(10)[28] and 12(a)(2)[29] of the Act.

By the Commission.

Dated: June 25, 1998.

BILLING CODE 8010–01–P

Margaret H. McFarland,

Deputy Secretary.

Appendix A

[**Note:** This Appendix A to the preamble will not appear in the Code of Federal Regulations]

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 135b under the Securities Act, as set forth in Securities Act Release No. 33–7550, would not, if adopted, impose additional disclosure or delivery requirements or otherwise alter current requirements, and therefore would not have a significant economic impact on a substantial number of small entities.

The amendment proposed in Securities Act Release No. 33–7550 is intended to codify a long standing interpretive position by clarifying that an Options Disclosure Document complying with the requirements of Exchange Act Rule 9b–1 is not subject to liability under Section 12(a)(2) of the Securities Act. No new disclosure or delivery obligations are proposed, nor are old methods of disclosure or delivery being terminated. Because the proposed amendment is consistent with the current interpretive position, no new liability would be imposed and the current liability system would not be altered. Since no changes to substantive disclosure or delivery requirements are being proposed, the proposal will not have a significant economic impact on businesses, large or small.

Economic benefits resulting from the proposed amendment are anticipated. In particular, the proposed amendment would eliminate uncertainty over the applicability of Section 12(a)(2) liability to an Options Disclosure Document.

Dated: June 24, 1998.

Arthur Levitt,

Chairman.

[FR Doc. 98–17438 Filed 6–30–98; 8:45 am]

BILLING CODE 8010–01–M

[27] 15 U.S.C. 77e.

[28] 15 U.S.C. 77b(10).

[29] 15 U.S.C. 77l(a)(2).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40129 , File No. S7–18–98]

RIN 3235–AH30

Amendment to Rule 9b–1 Under the Securities Exchange Act Relating to the Options Disclosure Document

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing an amendment to Rule 9b–1 (''Rule'') that would refine certain language of the Rule so that it more clearly reflects the regulatory standards it was designed to establish. The amendment is intended to strengthen Rule 9b–1 while continuing to ensure a regulatory scheme that fosters investors' understanding of the characteristics and risks of standardized options.

DATES: Comments should be submitted by July 31, 1998.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments may also be submitted electronically at the following E-Mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–18–98; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying at the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted at the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: For further information regarding this proposal, contact: Michael Walinskas, Deputy Associate Director, at (202) 942–0090 or Kevin Ehrlich, Attorney, at (202) 942–0778.

SUPPLEMENTARY INFORMATION:

I. Introduction

In general, Rule 9b–1:[1] (i) dictates when a self-regulatory organization is required to file an options disclosure document (''ODD'') with the Commission; (ii) itemizes the information required to be contained in the ODD; (iii) specifies the Commission's process of reviewing a preliminary ODD; and (iv) establishes the obligations of broker-dealers to furnish the ODD prior to approving a customer's account for trading in options. In light of the evolving nature of the standardized options[2] markets, the Commission is soliciting comments on a proposal to amend Rule 9b–1 to ensure that the requirements of the Rule continue to reflect the underlying objective of adequate disclosure regarding standardized options.

II. Background

Rule 9b–1 provides that an options disclosure document containing the information specified in paragraph (c) of the Rule must be filed with the Commission by an options market[3] at least 60 days prior to the date definitive copies of the document are furnished to customers. Paragraph (c) of the Rule currently specifies that, with respect to the options classes covered by the document, the document must contain, among other things, a discussion of the mechanics of buying, writing, and exercising the options; the risks of trading the options; the market for the option; and a brief reference to the transaction costs, margin requirements, and tax consequences of options trading. Paragraph (d) of the Rule further provides that no broker or dealer shall accept an options order from a customer, or approve the customer's account for the trading of options, ''unless the broker or dealer furnishes or has furnished to the customer the options disclosure document.''

The Commission adopted the Rule on September 16, 1982, in an effort to foster better investor understanding of standardized options trading and to reduce the costs of issuer compliance

[1] 17 CFR 240.9b–1.

[2] Paragraph (a)(4) of the Rule defines standardized options to mean ''options contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.''

[3] Paragraph (a)(1) of the Rule defines an options market to mean ''a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange on which standardized options are traded.''

with the registration requirements of the Securities Act of 1933 (''Securities Act'').[4] Prior to the adoption of the Rule, it was necessary for an options issuer to file a registration statement containing detailed information about the issuer of the options and the mechanics of options trading, in order to meet the registration requirements of the Securities Act. These registration requirements, however, made the prospectus ''lengthy and complicated'' and did not meet the needs of financially unsophisticated options investors.[5] Accordingly, the Commission proposed that a disclosure document be developed which would contain information concerning the risks and uses of options trading and present the information in a manner easily understandable by investors lacking a technical, financial background. With the adoption of Rule 9b–1, the Commission established a new disclosure procedure specifically geared to meeting the information needs of investors in standardized options.[6]

In 1982, following the adoption of Rule 9b–1, an options disclosure document was prepared jointly by the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc. (''CBOE''), the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Options Clearing Corporation (''OCC''). The initial disclosure document consisted of a single booklet generally describing the risks and uses of exchange-listed options on individual equity securities. Since that time, several revised disclosure booklets have been published describing, among other things, the risks and uses of listed options on stock indexes, debt instruments, and foreign currencies. Currently, the ODD utilized by the U.S. options exchanges is entitled ''Characteristics and Risks of Standardized Options.'' [7]

III. Discussion

The Commission is proposing several changes to Rule 9b–1 to better reflect the desired disclosure requirements regarding standardized options. The changes are minor or technical and do not alter the basic purpose of the Rule, to ensure the dissemination of essential options information to unsophisticated investors in a manner they can easily understand. Moreover, the changes should help to ensure that the Rule addresses the evolving nature of the standardized options markets. Accordingly, the Commission believes that the proposed amendments are necessary or appropriate in the public interest. The following is a discussion of the proposed changes.

In paragraph (a)(3) of the Rule, the definition of an ''options disclosure document'' will be amended in order to explicitly state that amendments and supplements to the ODD are included as part of the ODD. New financial products have been introduced into the standardized options marketplace recently, such as FLEX Equity options [8] and LEAPS.[9] In order to reduce printing costs, descriptions of these and similar products are often initially incorporated into the ODD through an ODD supplement and delivered to the customer along with the bound ODD. (This practice conforms to the Commission's interpretation of ODD supplement delivery obligations under the current rule.) The proposed amendment removes a potential ambiguity regarding whether such supplements are required to be delivered to customers and should be deemed part of the ODD.

In addition, a definition of ''definitive options disclosure document'' is being proposed in paragraph (a)(3) of the Rule so that Rules 134a and 135b under the Securities Act accurately reference Rule 9b–1.[10] This definition will be referenced in paragraphs (d)(1) and (d)(2) of the Rule. In this manner, the Commission believes that investor confusion will be lessened.

The amendment will also make several technical clarifying changes to the Rule. For example, in paragraph (b)(2)(i), the word ''options'' will be inserted before the phrase ''disclosure document.'' Similarly, in paragraph (b)(2)(ii), the phrase ''options disclosure document'' will replace the phrase ''such material,'' and the phrase ''options classes covered by the document'' will replace the more general language ''the subject standardized options contracts.'' In each of these instances, the Commission believes that the new language eliminates potential ambiguity.

The proposed amendments to paragraphs (c)(2) and (c)(3) of the Rule, which currently require that the ODD contain information regarding, respectively, the ''mechanics of buying, writing and exercising options, including settlement procedures'' and ''the risks of trading options'' will be changed to better reflect the type of information that appropriately is and should be included in the ODD. Specifically, paragraph (c)(2) will require a discussion of the ''mechanics of exercising'' options, and paragraph (c)(3) will require a discussion of the risks of ''being a holder or writer'' of options. The Rule's existing language might be interpreted incorrectly to mean that options exchanges covered by Rule 9b-1 must provide information to investors via the ODD about how to ''trade'' options, including exchange operating procedures and effective investment strategies.

Similarly, the proposed amendments to paragraphs (c)(4) and (c)(7) of the Rule will be amended to ensure that the scope of information included within the ODD is consistent with its intended purpose and character. Accordingly, rather than including a discussion of the ''market for the options,'' paragraph (c)(4) will simply require ''the identification of the market or markets in which the options are traded.'' In addition, paragraph (c)(7) will require a ''general'' identification of the ''type'' of instrument or instruments underlying the options class or classes covered by the document.

The changes to paragraphs (c)(2), (c)(3), (c)(4), and (c)(7) of the Rule should help to clarify that the purpose of the ODD is to inform investors generally about the characteristics and risks of options as well as the risks to investors of maintaining positions in options. The Commission does not intend for the proposed changes to the

[4] *See* Securities Exchange Act Release Nos. 18836 (June 24, 1982), 47 FR 28688 (July 1, 1982) (''Proposing Release'') and 19055 (September 16, 1982), 47 FR 41950 (September 23, 1982) (''Adopting Release'').

[5] Proposing Release, *id.* at 47 FR 28688.

[6] Concurrent with the adoption of Rule 9b–1, the Commission adopted a new Form S–20 for the registration of standardized options under the Securities Act. Adopting Release, *supra* note 3, 47 FR at 41951–2. This Form requires the filing of information related to the issuer of standardized options and such options. The Form must be filed with the Commission by the issuer before an options disclosure document may be distributed. 17 CFR 240.9b–1(b)(1)(1985).

[7] In addition to the ODD utlized by the U.S. options exchanges, two foreign exchanges, the London Securities and Derivatives Exchange (''OMLX'') and Canada Clearing Corporation, have each filed an ODD with the Commission. Both of these ODDs are modeled after the U.S. options market ODD.

[8] *See, e.g.,* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (order approving the listing of Flexible Exchange options on specified equity securities) (CBOE–95–43).

[9] LEAPS are equity and index options that have a longer term expiration (up to five years) as compared to regular options. *See, e.g.,* Securities Exchange Act Release No. 35617 (April 17, 1995), 60 FR 20132 (April 24, 1995) (CBOE–95–02).

[10] Rule 134a states that written materials related to standardized options will not be deemed to be a prospectus for the purposes of Section 2(10) of the Securities Act provided that, among other conditions, such materials are limited to explanatory information describing the general nature of the standardized options markets. In addition, Rule 135b states that for purposes of Section 5 of the Securities Act, materials meeting the requirements of Rule 9b–1 of the Exchange Act will not be deemed to constitute either an offer to sell or an offer to buy any security.

Rule to require any changes to the current disclosures in an ODD.[11]

IV. Request for Comments

The Comission seeks comments on the proposed amendments to Rule 9b-1. Comments should address whether the amendment clarifies the disclosure requirements of Rule 9b-1 while continuing to ensure a regulatory scheme that fosters inventors' understanding of standardized options. The Commission's view is that the proposed changes will not require any substantive changes to existing ODDs now distributed by the U.S. options exchanges, Canada Clearing Corporation, and OMLX. The Commission requests comment on this point.

V. Costs and Benefits of the Proposed Rule Change and its Effects on Competition

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed exemption, commentators are requested to provide analysis and data, if possible, relating to costs and benefits associated with the proposal herein. The proposed amendments to Rule 9b-1 under the Act will not change any substantive disclosure obligations or compliance costs. Rather, the proposal would clarify the disclosure requirements and goals regarding standardized option products. The proposal should remove ambiguity that currently may exist within the rules regarding standardized options disclosures. The Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors, broker-dealers, or others.

In addition, Section 23(a)(2) of the Act requires that the Commission, when promulgating rules under the Exchange Act, to consider, among other matters, the impact any such regulations would have on competition.[12] The Commission has preliminarily considered the proposed rule in light of the standards cited in Section 23(a)(2) of the Act and believes preliminarily that it would not impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. As noted above, the Commission does not believe that the proposed amendments will require any changes to the current disclosures in an ODD.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the Commission has certified that the proposed amendment would not have a significant economic impact on a substantial number of small entities.[13] The Commission requests comments on the certification (see Appendix A). Commenters are asked to provide empirical data to support the extent of any identified impact.

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A. We encourage written comments on the Certification. Commenters are asked to describe the nature of any impact on small business entities and provide empirical data to support the extent of the impact.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposals on the economy on an annual basis. The Commission does not currently believe that the amendments, if adopted, would result or be likely to result in (i) an annual effect on the economy of $100 million or more; (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effects on competition, investment, or innovation. Nevertheless, the Commission solicits comment on this preliminary view. Commentators should provide empirical data to support their views.

VII. Paperwork Reduction Act

Certain provisions of Rule 9b-1 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. § 3501 et seq.). The Commission previously submitted the rule to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d), and OMB has assigned the rule OMB control number 3235–0480. Because the proposed rule changes should not materially affect the substance of the required disclosures or the filing and delivery obligations under the rule, there is no requirement that the Commission resubmit the rule with the proposed amendment to OMB for review under the PRA.

VIII. Statutory Basis

The amendment to Rule 9b-1 is being proposed pursuant to 15 U.S.C. §§ 78a *et seq.*, particularly Sections 9 and 23.

Text of the Proposed Amendment

List of Subjects in post

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.9b–1 is amended by revising paragraphs (a)(3), (b)(2)(i) and (ii), (c)(2), (c)(3), (c)(4), (c)(6), (c)(7), (d)(1) and (d)(2) as follows:

§ 240.9b–1 Options disclosure document.

(a) * * *

(3) ''Options disclosure document'' means a document, *including all amendments and supplements thereto,* prepared by one or more options markets which *has been filed with the Commission or distributed in accordance with paragraph (b) of this section* [contains the information required by this rule with respect to the options classes covered by the document]. *''Definitive options disclosure document'' or ''document'' means an options disclosure document furnished to customers in accordance with paragraph (b) of this section.*

* * * * *

(b)(1) * * *

(2)(i) If the information contained in the options disclosure document

[11] The Commission notes that under the Rule it retains authority to review and approve ODDs and to revise ''such other information as the Commission may specify.''

[12] *See* 15 U.S.C. 78w(a)(2).

[13] Under the Exchange Act, as small broker or dealer entity is defined as ''a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter).'' 17 CFR 240.010(c).

becomes or will become materially inaccurate or incomplete or there is or will be an omission of material information necessary to make the *options* disclosure document not misleading, the options market shall amend *or supplement* its options disclosure document by filing five copies of an amendment *or supplement* to such options disclosure document with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the public interest and protection of investors. Five copies of the definitive options disclosure document, as amended *or supplemented,* shall be filed with the Commission not later than the date the *amendment or supplement,* or the amended options disclosure document, is furnished to customers.

(2)(ii) Notwithstanding paragraph (b)(2)(i) of this section, an options market may distribute *an amendment or supplement to an options disclosure document* [such materials] prior to such 30 day period if it determines, in good faith, that such delivery is necessary to ensure timely and accurate disclosure with respect to *one or more of the options classes covered by the document* [the subject standardized options contracts]. Five copies of any amendment *or supplement* distributed pursuant to this paragraph shall be filed with the Commission at the time of distribution. In that instance, if the Commission determines, having given due regard to the adequacy of the information disclosed and the public interest and the protection of investors, it may require refiling of the amendment pursuant to paragraph (b)(2)(i) of this section.

(c) * * *

(2) *A discussion of the* mechanics of [buying, writing and] exercising the options [including settlement procedures];

(3) *A discussion of the* risks of *being a holder or writer of the options* [trading the options];

(4) *The identification* of the market [for] *or markets in which* the options *are traded;*

* * * * *

(6) *The identification of* the issuer of the options;

(7) *A general* identification of the *type of* instrument or instruments underlying the options class *or classes covered by the document;*

* * * * *

(d) Broker-dealer obligations. (1) No broker or dealer shall accept an order from a customer to purchase or sell an option contract relating to an options class that is the subject of a[n] *definitive* options disclosure document, or approve the customer's account for the trading of such option, unless the broker or dealer furnishes or has furnished to the customer [the] *a copy of the definitive* options disclosure document.

(2) If a[n] *definitive* options disclosure document *relating to an options class* is amended or *supplemented,* each broker and dealer shall promptly send *a copy of the definitive amendment or supplement or a copy of the definitive options disclosure document as amended* [the information contained in the definitive amendment] to each customer whose account is approved for trading the options *class or* classes to which the *amendment or supplement* [options disclosure document] relates.

Dated: June 25, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Regulatory Flexibility Act Certification

[**Note:** This Appendix A to the preamble will not appear in the Code of Federal Regulations.]

I, Arthur Levitt, Jr., Chairman of the U.S. Securities and Exchange Commission (''Commission''), hereby certify, pursuant to 5 U.S.C. § 605(b), that the proposed amendment to Rule 9b–1 (''Rule'') under the Securities Exchange Act of 1934, (''Exchange Act'')[1] set forth in Securities Exchange Act Release No. 34–40129, would not, if adopted, have a significant economic impact on a substantial number of small entities. The proposed amendment will clarify existing disclosure obligations for standardized option products pursuant to Section 9 of the Act and Rule 9b–1 thereunder[2] and should not materially affect the substance of the required disclosures or the filing and delivery obligations under the Rule. Consequently, no new preparation, printing, or distribution costs will be necessary. Finally, the proposed rule imposes no new recordkeeping requirements or compliance burdens on small entities. Accordingly, the proposed amendment would not have a significant economic impact on a substantial number of small entities.

Dated: June 24, 1998

Arthur Levitt, Jr.,

Chairman.

[FR Doc. 98–17437 Filed 6–30–98; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78a *et seq.*

[2] 17 CFR 240.9b–1.

federal register

Wednesday
July 1, 1998

Part VII

Department of Education

34 CFR Parts 74 and 80

Administration of Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 80

Administration of Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Department of Education.

ACTION: Applicability of revised Office of Management and Budget circulars A–21, A–87, A–102, A–110, and A–122.

SUMMARY: The Secretary announces the applicability of five revised Office of Management and Budget (OMB) circulars. These revised circulars provide conditional exceptions from certain regulatory requirements for the Department of Education (ED) grant programs. The Secretary takes this action to promote efficiency in the State and local program administration of these programs.

DATES: The revised circulars are applicable as of July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ronelle Holloman, U.S. Department of Education, 600 Independence Avenue, SW, Room 3652, ROB–3, Washington, DC 20202–4248. Telephone: (202) 205–3501. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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.

SUPPLEMENTARY INFORMATION: On August 29, 1997, OMB published in the **Federal Register** (62 FR 45934) final revisions to five OMB circulars. The five circulars are A–21, ''Cost Principles for Educational Institutions''; A–87, ''Cost Principles for State, Local, and Indian Tribal Governments''; A–102, ''Grants and Cooperative Agreements with State and Local Governments''; A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations''; and A–122, ''Cost Principles for Non-Profit Organizations.'' Now the Secretary of ED announces the applicability of the five revised circulars to the Department's grant programs.

These revisions to the circulars provide a conditional exception from the requirements of 34 CFR Part 74 and a conditional class exception from the requirements of 34 CFR Part 80 for certain ED grant programs. The programs to which these revisions can apply are those formula grant programs with statutorily-authorized consolidated planning and consolidated administrative funding that are identified by ED and approved by the Secretary.

The Secretary can apply the exception to formula grant programs that are administered by State and local governments, and have the following characteristics: the related programs (1) serve a common program purpose, (2) have specific statutorily-authorized consolidated planning and consolidated administrative funding, and (3) are administered by State agencies that are funded mostly by non-Federal sources. To promote efficiency in the State and local program administration of such related programs, ED can exempt these covered, State-administered programs from Federal grants management requirements in OMB Circulars A–21, A–87, A–110 (34 CFR Part 74), and A–122 and the Grants Management Common Rule (34 CFR Part 80). The exemptions are from all but the allocability-of-costs provisions of Circulars A–21 (Section C, subpart 4), A–87 (Attachment A, subsection C.3), A–122 (Attachment A, subsection A.4) and from all of the administrative requirements provisions of 34 CFR parts 74 and 80.

Thus, ED has discretion to exempt a Federal formula grant program from the Federal grants management requirements. ED will consult with OMB during its consideration of whether to grant such an exemption.

If ED exempts a Federal formula grant program from these requirements, a State would be permitted to use only State procedures, provided that the State adopts its own written fiscal and administrative requirements for expending and accounting for all funds. These requirements must be consistent with the provisions of OMB Circular A–87 and extend to all sub-recipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions; costs are reasonable and necessary for operating these programs; and funds are not used for general expenses required to carry out other responsibilities of a State or its sub-recipients. If a State does not adopt such fiscal and administrative requirements it will continue to be subject to the Federal grants management requirements.

The Department of Education implements OMB Circulars A–102 and A–110 through regulations codified in 34 CFR Parts 80 and 74 respectively. Because these regulations contain sufficient discretion for ED to implement OMB's guidance, ED does not need to amend these regulations.

In addition, ED adopts the changes to OMB Circulars A–21, A–87 and A–122 that contain cost principles for educational institutions, State and local governments, and non-profit organizations, respectively. These circulars have been amended several times over the years by OMB, and ED has adopted these changes by publishing notices in the **Federal Register**. For a complete list of prior amendments to these circulars adopted by ED, please consult the following **Federal Register** publications: for OMB Circular A–21, May 8, 1996 (61 FR 20880); for Circular A–87, May 17, 1995 (60 FR 26484); and for Circular A–122, May 14, 1997 (62 FR 26577).

The five circulars are available by calling OMB's Publication Office at (202) 395–7332, or they can be obtained in electronic form from the OMB Home Page at (http://www.whitehouse.gov/WH/EOP/omb).

Waiver of Notice and Comment

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed actions in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since OMB previously provided the public an opportunity for comment on the revision of Circulars A–21, A–87, A–102, A–110 and A–122, the Secretary finds that soliciting further public comment with respect to adopting the revised circulars is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B). For the same reasons, the Secretary waives the delayed effective date for this action under 5 U.S.C. 553(d).

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Note: The official version of this document is the document published in the **Federal Register**.

Dated: June 23, 1998.

(Catalog of Federal Domestic Assistance Number does not apply.)

Donald Rappaport,

Chief Financial and Chief Information Officer.

[FR Doc. 98–17256 Filed 6–30–98; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
July 1, 1998

Part VIII

The President

Presidential Determination No. 98–31 of June 19, 1998—Presidential Determination on U.S. Assistance to the Korean Peninsula Energy Development Organization (KEDO)

Federal Register
Vol. 63, No. 126
Wednesday, July 1, 1998

Presidential Documents

Title 3—

The President

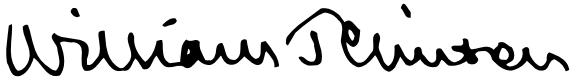
Presidential Determination No. 98–31 of June 19, 1998

Presidential Determination on U.S. Assistance to the Korean Peninsula Energy Development Organization (KEDO)

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the ''Act''), I hereby determine that it is important to the security interests of the United States to furnish up to $5 million in funds made available under Chapter IV, Part II of the Act for a U.S. contribution to KEDO without regard to any provision of law within the scope of section 614(a)(1). I hereby authorize this contribution.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 19, 1998.

[FR Doc. 98–17758
Filed 6–30–98; 8:45 am]
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Federal Register

Vol. 63, No. 126

Wednesday, July 1, 1998

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FEDERAL REGISTER PAGES AND DATES, JULY

35787–36150..... 1

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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 JULY 1, 1998

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing, and standards:
- Classification services to growers; 1998 user fees; published 6-18-98

Raisins produced from grapes grown in—
- California; published 6-1-98

Tobacco inspection:
- Growers; mail referendum
  - Referendum results; published 6-1-98

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Fish and wildlife; subsistence taking; published 6-29-98

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Agricultural commodities standards:
- Inspection services; use of contractors; published 6-1-98

Fees:
- Official inspection and weighing services; published 6-16-98

Grain inspection equipment performance requirements:
- Corn, oil, protein and starch; near-infrared spectroscopy (NIRS) analyzers; published 6-30-98

AGRICULTURE DEPARTMENT

Organization, functions, and authority delegations:
- Administrator, Food and Nutrition Service; published 7-1-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific halibut and red king crab; published 6-4-98
- West Coast States and Western Pacific fisheries—
  - Western Pacific crustacean; published 6-3-98

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:
- Nucleotide and/or amino acid sequences; submission in computer readable form; published 6-1-98
- Patent Cooperation Treaty application procedures; published 6-1-98

EDUCATION DEPARTMENT

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; published 7-1-98

Postsecondary education:
- Federal family education and William D. Ford Federal direct loan programs; requirements modification; published 11-28-97
- Federal work-study programs; published 11-28-97
- Student assistance general provisions—
  - Compliance audits and financial responsibility standards; published 11-25-97
- William D. Ford Federal direct student loan program; reporting and recordkeeping requirements; published 6-26-98

Special education and rehabilitative services:
- Individuals with Disabilities Education Act Amendments of 1997; implementation—
  - Infants and toddlers with disabilities early intervention program; published 4-14-98
- Preschool grants for children with disabilities program; published 6-1-98

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Sodium chlorate; published 7-1-98

Toxic substances:
- Significant new uses—
  - Sinorhizobium meliloti strain RMBPC-2 microorganism; published 6-1-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- InterLATA 0+ calls; billed party preference; published 3-10-98
- Tariffs—
  - Electronic filing system; published 6-30-98

Radio services, special:
- Maritime services—
  - Passenger ships, large cargo and small; radio installations inspection; published 6-1-98

FEDERAL DEPOSIT INSURANCE CORPORATION

Deposit insurance coverage:
- Streamlining and simplification; published 5-11-98

International banking regulations; consolidation and simplification; published 4-8-98

GENERAL SERVICES ADMINISTRATION

Federal property management:
- Buildings and space—
  - Tobacco smoking policy; published 7-1-98

Federal travel:
- Federal travel regulation; general guidance and temporary duty travel allowances; published 4-1-98
  - Correction; published 6-30-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
- Adjuvants, production aids, and sanitizers—
  - Cetylmethyl, dimethyl, methyl 11-methoxy-11-oxoundecyl; published 7-1-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare and Medicaid:
- Home health agencies—
  - Surety bond requirements; published 6-1-98

Medicare:
- Bone mass measurement, coverage of and payment for; published 6-24-98
- Skilled nursing facilities; prospective payment system and consolidated billing; published 5-12-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health resources development:
- Organ procurement and transplantation network; operation and performance goals; published 4-2-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Interest Lands Conservation Act; Title VIII Implementation (subsistence priority):
- Fish and wildlife; subsistence taking; published 6-29-98

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Alabama; published 7-1-98

JUSTICE DEPARTMENT

Freedom of Information and Privacy Acts; implementation; published 6-1-98

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright office and procedures:
- Special services; fees; published 5-28-98

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records management:
- Technical amendments; published 7-1-98

NUCLEAR REGULATORY COMMISSION

Decommissioning funding by nonprofit and non-bond-issuing licensees; self-guarantee; published 6-1-98

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:
- Allocation of assets—
  - Interest assumptions for valuing benefits; published 6-15-98

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:
- Recovery of overpayments; published 6-1-98

TRANSPORTATION DEPARTMENT

Coast Guard

Merchant marine officers and seamen:

Tankerman and persons in charge of dangerous liquids and liquefied gases transfers; qualification
Compliance dates establishment; published 7-1-98
Ports and waterways safety:
East River, NY; safety zone; published 6-30-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
British Aerospace; published 4-2-98

TREASURY DEPARTMENT
Foreign Assets Control Office
Sudanese sanctions regulations; published 7-1-98

TREASURY DEPARTMENT
Fiscal Service
Book-entry Treasury bonds, notes, and bills:
Securities in book-entry from held through financial intermediaries ≥TRADES≥ regulations; published 7-1-98

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Kerosene and aviation fuel taxes and tax on heavy vehicles; published 7-1-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Kiwifruit grown in—
California; comments due by 7-6-98; published 6-5-98

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Gypsy moth; comments due by 7-10-98; published 5-11-98
Mediterranean fruit fly; comments due by 7-10-98; published 5-11-98
User fees; veterinary diagnostic services; comments due by 7-6-98; published 5-4-98

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Food stamp program; retailer integrity, fraud reduction, and penalties; comments due by 7-6-98; published 5-6-98

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic shrimp; comments due by 7-6-98; published 6-3-98
Magnuson-Stevens Act provisions—
Fisheries and gear list and notification guidelines; comments due by 7-6-98; published 6-4-98

DEFENSE DEPARTMENT
Acquisition regulations:
Simplified acquisition procedures; comments due by 7-7-98; published 5-8-98
Federal Acquisition Regulation (FAR):
Offeror or contractor representation requirements; reduction or removal; comments due by 7-6-98; published 5-7-98

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Petroleum refineries; comments due by 7-9-98; published 6-9-98
Air programs:
Fuels and fuel additives—
Colorado; gasoline Reid Vapor Pressure volatility standard for 1998, 1999, and 2000; approval of petition to relax; comments due by 7-10-98; published 6-10-98
Colorado; gasoline Reid Vapor Pressure volatility standard for 1998, 1999, and 2000; approval of petition to relax; comments due by 7-10-98; published 6-10-98
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 7-8-98; published 6-8-98
Tennessee; comments due by 7-8-98; published 6-8-98
Texas; comments due by 7-8-98; published 6-8-98
Clean Air Act:
Acid rain program—
Continuous emission monitoring; bias test, relative accuracy test, and availability analysis; determinations; comments due by 7-6-98; published 5-21-98
Continuous emission monitoring; rule streamlining; correction; comments due by 7-6-98; published 6-8-98
Pesticides; emergency exemptions, etc.:
2-propene-1-sulfonic acid, etc.; comments due by 7-6-98; published 5-6-98
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
E.I. DuPont de Nemours & Co.; comments due by 7-6-98; published 5-6-98
Safener HOE-107892; comments due by 7-6-98; published 5-6-98

FEDERAL COMMUNICATIONS COMMISSION
Industrial, scientific, and medical equipment:
RF (radio frequency) lighting devices; comments due by 7-8-98; published 4-24-98
Radio frequency devices:
Scanning receivers, further ensurance against receiving cellular radio signals; comments due by 7-10-98; published 6-10-98
Radio stations; table of assignments:
Illinois; comments due by 7-6-98; published 5-21-98

FEDERAL EMERGENCY MANAGEMENT AGENCY
Disaster assistance:
Temporary housing assistance; application period extension; comments due by 7-6-98; published 5-6-98

FEDERAL TRADE COMMISSION
Electronic media; rules and guides applicability; comment request; comments due by 7-7-98; published 5-6-98

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Offeror or contractor representation requirements; reduction or removal; comments due by 7-6-98; published 5-7-98

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Biological products:
General safety test requirements; exemptions; comments due by 7-6-98; published 4-20-98
Color additives:
Color additive lakes; safe use in food, drugs, and cosmetics; permanent listing; comments due by 7-6-98; published 6-3-98
Food for human consumption:
Beverages—
Fruit and vegetable juices and juice products; HACCP procedures for safe and sound importation; comments due by 7-8-98; published 4-24-98
Juice and juice products safety; preliminary regulatory impact analysis and initial regulatory flexibility analysis; comments due by 7-8-98; published 5-1-98
Food labeling—
Crabmeat; common or usual name for nonstandardized foods; comments due by 7-7-98; published 4-23-98
Medical devices:
Hematology and pathology devices—
Over-the-counter test sample collection systems for drugs of abuse testing; reclassification and designation as restricted devices; comments due by 7-6-98; published 3-5-98

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Health Insurance Portability and Accountability Act of 1996:
Administrative requirements—
Electronic transactions standards; comments due by 7-6-98; published 5-7-98
Health Insurance Portability and Accountability Act; implementation:
Administrative requirements—

National standard health care provider identifier; comments due by 7-6-98; published 5-7-98

Medicare:

Clinical diagnostic laboratory testing; coverage and administrative policies; negotiated rulemaking committee—

Establishment and meetings; comments due by 7-6-98; published 6-3-98

Hospital inpatient prospective payment systems and 1999 FY rates; comments due by 7-7-98; published 5-8-98

Provider-sponsored organizations; waiver requirements and solvency standards; comments due by 7-6-98; published 5-7-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Housing and Community Development Act of 1974; implementation:

Nondiscrimination in programs and activities receiving assistance under Title I; discrimination complaint filing procedures; comments due by 7-10-98; published 5-11-98

Low income housing:

Housing assistance payments (Section 8)—

Fair market rent schedules for rental certificate, loan managment, property disposition, moderate rehabilitation, rental voucher programs, etc.; comments due by 7-6-98; published 5-5-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Mariana fruit bat; comments due by 7-10-98; published 5-29-98

JUSTICE DEPARTMENT

National Instant Criminal Background Check System; policies and procedures; establishment; comments due by 7-6-98; published 6-4-98

Privacy Act; implementation; comments due by 7-6-98; published 6-4-98

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Offeror or contractor representation requirements; reduction or removal; comments due by 7-6-98; published 5-7-98

SMALL BUSINESS ADMINISTRATION

Business loans:

504 program financing and clarification of existing regulations; comments due by 7-6-98; published 5-5-98

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, AK; safety zone; comments due by 7-10-98; published 6-10-98

San Francisco Bay et al., CA; safety/security zone; comments due by 7-6-98; published 5-7-98

Regattas and marine parades:

Greater Jacksonville Kingfish Tournament; comments due by 7-9-98; published 6-19-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Aerospatiale; comments due by 7-6-98; published 6-4-98

Agusta S.p.A.; comments due by 7-6-98; published 6-5-98

Airbus; comments due by 7-6-98; published 6-3-98

Allison Engine Co.; comments due by 7-7-98; published 5-8-98

Boeing; comments due by 7-6-98; published 5-20-98

Bombardier; comments due by 7-8-98; published 6-8-98

British Aerospace; comments due by 7-6-98; published 6-3-98

Construcciones Aeronauticas, S.A.; comments due by 7-8-98; published 6-8-98

Dornier; comments due by 7-6-98; published 6-9-98

Eurocopter France; comments due by 7-6-98; published 5-7-98

McDonnell Douglas; comments due by 7-6-98; published 5-20-98

Pratt & Whitney; comments due by 7-6-98; published 5-7-98

Raytheon; comments due by 7-10-98; published 5-5-98

REVO, Inc.; comments due by 7-8-98; published 5-15-98

Rolls-Royce; comments due by 7-6-98; published 5-6-98

Saab; comments due by 7-9-98; published 6-9-98

Class B airspace; comments due by 7-6-98; published 6-4-98

Class D and Class E airspace; comments due by 7-6-98; published 6-3-98

Class E airspace; comments due by 7-6-98; published 5-15-98

Colored Federal airways; comments due by 7-6-98; published 6-5-98

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Insurer reporting requirements:

Motor vehicle theft loss experiences report filing; list; comments due by 7-6-98; published 5-4-98

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Hazardous liquid transportation—

Liquefied compressed gases in cargo tank motor vehicles; safety standards for unloading; negotiated rulemaking committee; intent to establish and meeting; comments due by 7-6-98; published 6-4-98

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1847/P.L. 105–184

Telemarketing Fraud Prevention Act of 1998 (June 23, 1998; 112 Stat. 520)

S. 1150/P.L. 105–185

Agricultural Research, Extension, and Education Reform Act of 1998 (June 23, 1998; 112 Stat. 523)

S. 1900/P.L. 105–186

U.S. Holocaust Assets Commission Act of 1998 (June 23, 1998; 112 Stat. 611)

H.R. 3811/P.L. 105–187

Deadbeat Parents Punishment Act of 1998 (June 24, 1998; 112 Stat. 618)

Last List June 24, 1998

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CFR ISSUANCES 1998
January—April 1998 Editions and Projected July, 1998 Editions

This list sets out the CFR issuances for the January–April 1998 editions and projects the publication plans for the **July, 1998** quarter. A projected schedule that will include the **October, 1998** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1997–1998 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1998:

Title

CFR Index

1–2 (Cover only)

3 (Compilation)

4 (Cover only)

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
1–26
27–52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1199
1200–1599
1600–1899
1900–1939
1940–1949
1950–1999
2000–End

8

9 Parts:
1–199
200–End

10 Parts:
1–50
51–199
200–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–799
800–End

16 Parts:
0–999
1000–End

Titles revised as of April 1, 1998:

Title

17 Parts:
1–199
200–239
240–End

18 Parts:
1–399
400–End

19 Parts:
1–140
141–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
0–199
200–499
500–699
700–1699
1700–End

25

26 Parts:
1 (§§ 1.0-1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.440)
1 (§§ 1.441–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599
600–End

27 Parts:
1–199
200–End

Projected July 1, 1998 editions:

Title

28 Parts:
0–42
43–End

29 Parts:
0–99
100–499
500–899
900–1899
1900–1910.999
1910.1000–End
1911–1925
1926
1927–End

30 Parts:
1–199
200–699
700–End

31 Parts:
0–199
200–End

32 Parts:
1–190
191–399
400–629
630–699 (Cover only)
700–799
800–End

33 Parts:
1–124
125–199
200–End

34 Parts:
1–299
300–399
400–End

35

36 Parts:
1–199
200–299
300–End

37

38 Parts:
0–17
18–End

39

40 Parts:
1–49
50–51
52 (§ 52.01—52.1018)
52 (§ 52.1019 to end)
53–59
60
61–62
63
64–71
72–80
81–85
86
87–135
136–149
150–189
190–259
260–265
266–299
300–399
400–424
425–699
700–789
790–End

41 Parts:
Chs. 1–100
Ch. 101
Chs. 102–200
Ch. 201–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 1998

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 1	July 16	July 31	August 17	August 31	September 29
July 2	July 17	August 3	August 17	August 31	September 30
July 6	July 21	August 5	August 20	September 4	October 5
July 7	July 22	August 6	August 21	September 8	October 5
July 8	July 23	August 7	August 24	September 8	October 6
July 9	July 24	August 10	August 24	September 8	October 7
July 10	July 27	August 10	August 24	September 8	October 8
July 13	July 28	August 12	August 27	September 11	October 13
July 14	July 29	August 13	August 28	September 14	October 13
July 15	July 30	August 14	August 31	September 14	October 13
July 16	July 31	August 17	August 31	September 14	October 14
July 17	August 3	August 17	August 31	September 15	October 15
July 20	August 4	August 19	September 3	September 18	October 19
July 21	August 5	August 20	September 4	September 21	October 19
July 22	August 6	August 21	September 8	September 21	October 20
July 23	August 7	August 24	September 8	September 21	October 21
July 24	August 10	August 24	September 8	September 22	October 22
July 27	August 11	August 26	September 10	September 25	October 26
July 28	August 12	August 27	September 11	September 28	October 26
July 29	August 13	August 28	September 14	September 28	October 27
July 30	August 14	August 31	September 14	September 28	October 28
July 31	August 17	August 31	September 14	September 29	October 29