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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA52

Fees for Official Inspection and Official Weighing Services

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

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing by approximately 3 percent fees it charges for certain of its official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. The increase covers hourly rates and certain unit rates on tests performed at other than an applicant's facility. The increase is designed to generate additional revenue required to recover operational costs created by mandated cost-of-living increases to Federal salaries in fiscal year 1997.

EFFECTIVE DATE: June 15, 1997.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA–GIPSA–ART, Room 0623-South Building, STOP 3649, 1400 Independence Avenue, S.W., Washington, D.C., 20250–3649, Telephone (202) 720–0292, or FAX (202) 720–4628, or E-Mail—gwollam@fgisdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this final rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to provisions of this final rule.

Effects on Small Entities

James R. Baker, Administrator, GIPSA, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Most users of the official inspection and weighing services do not meet the requirements for small entities. FGIS is required by statute to make services available and to recover costs of providing such services, as nearly as practicable.

The fee revision is primarily applicable to entities engaged in the export of grain. Under provisions of the USGSA, most grain exported from U.S. export port locations must be officially inspected and weighed. Mandatory inspection and weighing services are provided by FGIS on a fee basis at 37 export facilities. All of the export facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities as defined under the Regulatory Flexibility Act and the regulations issued thereunder. Some users who request non-mandatory official inspection and weighing services at other than export locations could be considered small entities. However, this fee increase merely reflects the cost-of-living increases in Federal salaries for hourly and certain unit fees. The approximate 3-percent increase in fees will not have a significant impact on either small or large entities. Additional revenue estimated for fiscal year 1997 is projected to be $218,100 for a total of $22.21 million in revenue projected for fiscal year 1997.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the previously approved information collection and recordkeeping requirements have been approved by the Office of Management and Budget under control number 0580–0013.

Background

On May 13, 1997, GIPSA published in the **Federal Register** (62 FR 26252) a proposal to increase by approximately 3 percent certain fees it charges for official inspection and weighing services. A correction docket was published in the **Federal Register** (62 FR 28922) on May 28, 1997, which made non substantive format and editorial changes to Table 1 of schedule A of section 800.71(a).

The USGSA requires FGIS to charge and collect reasonable fees for performing official inspection and weighing services. The fees are to cover, as nearly as practicable, FGIS' costs for performing these services, including related administrative and supervisory costs.

The approximate 3-percent increase in fees is designed to generate additional revenue required to recover operational costs created by mandated cost-of-living increases to Federal salaries for GIPSA employees in fiscal year 1997. The average salary increase for GIPSA employees in fiscal year 1997 is approximately 3 percent. The final action is being taken immediately to increase fiscal year 1997 revenue to cover, in part, projected fiscal year 1997 operational costs.

The current USGSA fees were published in the **Federal Register** on August 22, 1996 (61 FR 43301), and became effective on October 1, 1996. The current fee schedule is projected to generate approximately $22 million revenue for fiscal year 1997. This revenue is insufficient to recover operating expenses in fiscal year 1997. This is 5.2 percent below estimated fiscal year 1997 costs of $23.2 million. Similar losses have occurred over the past 3 years with $753,000 in fiscal year 1994; $630,000 in fiscal year 1995; and $1,273,000 in fiscal year 1996. These losses resulted in a retained earnings balance of only $922,000 at the beginning of fiscal year 1997, significantly below a desired 3-month

operating reserve of $6 million. With the fee increase, it is estimated that $218,100 in additional revenue will be generated for fiscal year 1997. Total costs for fiscal year 1997 are projected to be $23.2 million and revenues with the fee increase for the last period of fiscal year 1997 are projected to be $22.21 million.

A further adjustment of fees, including an adjustment to the per metric ton administrative fee to recover the indirect costs of field offices and headquarters and replenish the operating reserve, is being considered and will be addressed in future rulemaking.

Comment Review

FGIS received three comments from trade associations during the 15-day comment period. One commentor did not oppose the proposed increases to existing fees; one was neutral on the proposed fee increase; and one did not address the merits of the fee increase itself. All the commentors, however, encourage GIPSA to strengthen its efforts to trim overhead and improve operating efficiencies throughout the organization. GIPSA continuously monitors its costs and strives to lessen overhead and improve operating efficiencies.

One commentor also was of the view that the 15-day comment period did not allow enough time to notify its members of the proposed action. As stated in the proposal, a 15-day comment period was deemed appropriate because projected exports and the associated requests for official services for such grain are projected to decrease in the coming months due to seasonal and other adjustments. Accordingly, given the current level of the operating reserve, it was deemed necessary to implement any fee increase that may result from this rulemaking as soon as possible.

Final Action

GIPSA is applying an approximate 3-percent increase to those hourly and certain unit rates in 7 CFR 800.71, Table 1—Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory; Table 2—Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory; and Table 3—Miscellaneous Services.

In reviewing the fee schedule to identify fees that require a 3-percent increase, FGIS identified several fees that under the current fee schedule are at levels that do not require any change. Accordingly, those fees will remain the same at this time.

It is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Projected exports and the associated requests for official services for such grain are projected to decrease in the coming months due to seasonal and other adjustments; (2) given the current level of the operating reserve, the fee increase should be implemented as soon as possible; and the effective date coincides with beginning of a billing cycle.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

For the reasons set out in the preamble, 7 CFR part 800 is revised as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Schedule A to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime [2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	$23.80	$25.60	$33.40	$40.20
6-month contract	25.80	27.60	35.40	46.20
3-month contract	29.60	30.80	38.60	48.00
Noncontract	34.00	36.00	44.20	54.20
(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]				
(i) Aflatoxin (other than Thin Layer Chromatography)				$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)				20.00
(iii) Soybean protein and oil (one or both)				1.50
(iv) Wheat protein (per test)				1.50
(v) Sunflower oil (per test)				1.50
(vi) Vomitoxin (qualitative)				7.50
(vii) Vomitoxin (quantitative)				12.50
(viii) Waxy corn (per test)				1.50
(ix) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.				
(x) Other services				
(a) Class Y Weighing (per carrier)				
(1) Truck/container				.30
(2) Railcar				1.25
(3) Barge				2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).				
(i) All outbound carriers (per-metric-ton) [4]				
(a) 1–1,000,000				$ 0.090

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]—Continued

	Monday to Friday (6 a.m to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime [2]	Holidays
(b) 1,000,001-1,500,000				0.082
(c) 1,500,001—2,000,000				0.042
(d) 2,000,001—5,000,000				0.032
(e) 5,000,001—7,000,000				0.017
(f) 7,000,001—				0.002
(ii) Additional services (assessed in addition to all other fees) [3]				
(a) Submitted sample (per sample—grade and factor)				1.50
(b) Submitted sample—Factor only (per factor)				0.70

[1] Fees apply for original inspection and weighing, reinspection, and appeal inspection service include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier)	$17.80
(b) Railcar (per carrier)	27.25
(c) Barge (per carrier)	174.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.75
(b) Railcar (per carrier)	19.00
(c) Barge (per carrier)	108.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	10.25
(b) Warehouseman inspection (per sample)	17.25
(c) Factor only (per factor—maximum 2 factors)	4.20
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	11.25
(f) Class X Weighing (per hour per service representative)	45.00
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	25.25
(b) Aflatoxin (per test—TLC method)	100.75
(c) Soybean protein and oil (one or both)	7.85
(d) Wheat protein (per test)	7.85
(e) Sunflower oil (per test)	7.85
(f) Vomitoxin (qualitative)	25.25
(g) Vomitoxin (quantitative)	30.25
(h) Waxy corn (per test)	9.10
(i) Canola (per test—00 dip test)	9.10
(j) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	200.00
(2) Special Compounds (per service representative)	100.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table [1].	
(2) Appeal inspection and review of weighing service [4]	
(i) Board Appeals and Appeals (grade and factor)	74.85
(a) Factor only (per factor—max 2 factors)	38.25
(b) Sampling service for Appeals additional (hourly rates from Table 1).	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	25.25
(b) Aflatoxin (TLC)	110.30
(c) Soybean protein and oil (one or both)	15.45
(d) Wheat protein (per test)	15.45
(e) Sunflower oil (per test)	15.45
(f) Vomitoxin (per test—qualitative)	35.25
(g) Vomitoxin (per test—quantitative)	40.25
(h) Vomitoxin (per test—HPLC Board Appeal)	126.00
(i) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	200.00
(2) Special Compounds (per service representative)	100.00

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

(j) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(iii) Review of weighing (per hour per service representative)	65.40
(3) Stowage examination (service-on-request) [3]	
(i) Ship (per stowage space) (minimum $250 per ship)	50.00
(ii) Subsequent ship examinations (same as original) (minimum $150 per ship)	.....
(iii) Barge (per examination)	40.00
(iv) All other carriers (per examination)	15.00

[1] Fees apply for original inspection and weighing, reinspection, and appeal inspection service include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72 (b).

[3] If performed outside of normal business, 1–1/2 times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES [1]

(1) Grain grading seminars (per hour per service representative) [2]	$45.00
(2) Certification of diverter-type mechanical samplers (per hour per service representative) [2]	45.00
(3) Special weighing services (per hour per service representative) [2]	
(i) Scale testing and certification	45.00
(ii) Evaluation of weighing and material handling systems	45.00
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	45.00
(iv) NTEP Prototype evaluation of Railroad Track	.....
Scales (plus usage fee per day for test car)	45.00
	100.00
(v) Mass standards calibration and reverification	45.00
(vi) Special projects	45.00
(4) Foreign travel (per day per service representative)	420.00
(5) Online customized data EGIS service	.....
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.50
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	.....
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $45.00 per hour.

[2] Regular business hours-Monday thru Friday-service provided at other than regular hours charged at the applicable overtime hourly rate.

Dated: June 6–5, 1997.

David R. Shipman,

Acting Administrator.

[FR Doc. 97–15267 Filed 6–10–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[FV96–985–3 FIR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1996–97 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, an interim final rule increasing the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1996–97 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2043; Fax: (503) 326–7440; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–8139; Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698.

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule continues an increase in the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1996–97 marketing year, which ended on May 31, 1997. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This rule finalizes an interim final rule that increased the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1996-97 marketing year, which ends on May 31, 1997. Thus, this rule finalizes the increase in the salable quantity from 1,074,902 pounds to 1,213,692 pounds and the allotment percentage from 54 percent to 61 percent for Native spearmint oil for the 1996–97 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1996–97 marketing year were recommended by the Committee at its September 26, 1995, meeting. The Committee recommended salable quantities of 989,303 pounds and 1,074,902 pounds, and allotment percentages of 55 percent and 54 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the January 24, 1996, issue of the **Federal Register** (61 FR 1855). Comments on the proposed rule were solicited from interested persons until February 23, 1996. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1996–97 marketing year was published in the March 20, 1996, issue of the **Federal Register** (61 FR 11291).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, at its November 14, 1996, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1996-97 marketing year be increased by 7 percent from 54 percent to 61 percent. This final rule increases the 1996–97 marketing year salable quantity of 1,074,902 pounds to 1,213,692 pounds.

However, some Native spearmint oil producers did not produce all of their individual salable quantities for the 1996–97 marketing year, or fill their deficiencies from the prior year's production. The marketing order authorizes such producers to have their deficiencies filled by other producers who have production in excess of their salable quantities. This is optional for producers, but must be done before November 1 of each marketing year.

The original total industry allotment base for Native spearmint oil for 1996–97 was established at 1,990,559 pounds and was revised to 1,989,659 pounds to reflect loss of base due to non-production of producer's total annual allotments. This adjustment resulted in a 900 pound loss of total industry base, which is reflected in the calculations for the revised salable quantity.

This final rule finalizes the interim final rule that made an additional amount of Native spearmint oil available by increasing the salable quantity which releases oil from the reserve pool. Only producers with Native spearmint oil in the reserve pool will be able to use this increase in the salable quantity. Prior to November 1, 1996, producers without reserve pool oil or producers with an insufficient supply of reserve oil could have deficiencies in meeting their salable quantities filled by producers having excess Native spearmint oil. If all producers could use their salable quantity, this 7 percent increase in the allotment percentage would have made an additional 135,276 pounds of Native spearmint oil available (1,989,659 x 7 percent). However, Native spearmint oil producers having 25,546 pounds of Native spearmint oil will not be able to use their reserve pool deficiencies this marketing year. Deficiencies usually exist because of unplanned problems that may reduce spearmint production. Thus, rather than 135,276 additional pounds being made available, this action continues to make 113,730 additional pounds of Native spearmint oil available to the market.

The following table summarizes the Committee recommendation:

Native Spearmint Oil Recommendation

(a) Actual Carry In on June 1, 1996: 45,632 pounds
(b) 1995–96 Salable Quantity: 1,074,902 pounds
(c) 1995–96 Available Supply: 1,120,534 pounds (a + b)
(d) Total Sales as of November 14, 1996: 1,036,058 pounds
(e) Calculated Available Supply as of November 14, 1996: 84,476 pounds (c–d)
(f) Reserve Deficiency Affecting Salable Quantity: 25,546 pounds
(g) Revised Total Allotment Base: 1,989,659 pounds
(h) Recommended Allotment Percentage as of November 14, 1996: 61 percent
(i) Calculated Revised Salable Quantity: 1,213,692 pounds (g x h)
(j) Actual Oil Available as Salable Quantity: 1,188,146 pounds (i–f)

The Department, based on its analysis of available information, has determined that an allotment percentage of 61 percent should be established for Native spearmint oil for the 1996–97 marketing year. This percentage will provide an

increased salable quantity of 1,213,692 and a new allotment percentage from 54 percent to 61 percent for Native spearmint oil for the 1996–97 marketing year.

This rule relaxes the regulation of Native spearmint oil and will allow growers to meet market needs and improved returns. In conjunction with the issuance of this rule, the Department has reviewed the Committee's revised marketing policy statement for the 1996–97 marketing year. The Committee's marketing policy statement has been reviewed under the provisions as set forth in 7 CFR 985.50 and with other USDA guidelines.

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

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

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

Based on the SBA's definition of small entities, it is estimated that none of the eight handlers regulated by the order would be considered small entities. All of the handlers are large corporations involved in the international trading of essential oils and the products of such essential oils. It is also estimated that 20 of the 135 Scotch spearmint oil producers and 10 of the 115 Native spearmint oil producers would be classified as small entities under the SBA definition. This is based on production information gathered from assessments. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint for weed, insect, and disease control. A normal spearmint producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint production, most spearmint producing farms would fall into the category of large businesses.

Small spearmint oil producers represent a minority of farming operations and are more vulnerable to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the resources to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because of stronger incomes from alternate crops which could support the operation for a period of time. Despite the advantage of larger producers, increasing the Native salable quantity and allotment percentage will help both large and small producers by improving returns. In addition, this change may potentially benefit the small producer more than large producers. This is because the change ensures that small producers are more likely to maintain a profitable cash flow and meet annual expenses.

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1996–97 marketing year began on June 1, 1996. As required under § 985.50, the Committee reviewed at a public meeting and submitted to the Department, a marketing policy that included the following Native spearmint oil information: estimated quantity; estimated demand; prospective production; estimated total allotment base; quantity of reserve oil; oil prices; market conditions; and whether the average price was expected to exceed parity. Handlers have indicated that with this action, the available supply of both Scotch and Native spearmint oils appears adequate to meet anticipated demand through May 31, 1997.

Without the increase in Native spearmint oil, the Committee believes the industry would not be able to meet market needs. As of November 14, 1996, 84,476 pounds of Native spearmint oil was available for market. Demand for Native spearmint oil from December 1 to May 31 over the past five years has ranged from a high of 245,661 pounds in 1991–92 to a low of 92,658 pounds in 1992–93. The five year average is 157,531 pounds. Therefore, given this past history the industry would be unlikely to meet market demand without this change. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 1996–97 marketing year, it had anticipated that the year would end with an ample available supply. This revision adds 113,730 pounds of Native spearmint oil to the amount available for market during the remainder of the 1996–97 marketing year.

Alternatives to this rule included not to increase the available supply of Native spearmint oil, which could potentially hurt small producers. The Committee believes that the level recommended will meet market needs.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicitous information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons were also invited to submit information on the regulatory and informational impacts of this action on small businesses.

The interim final rule regarding this action was issued on January 3, 1997, and published in the **Federal Register** (62 FR 1246, January 9, 1997), with an effective date of January 9, 1997. That rule amended § 985.215 of the rules and regulations in effect under the order.

That rule provided a 30-day comment period which ended February 10, 1997. No comments were received.

After consideration of all relevant matter presented, including that contained in the prior proposed, interim final, and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1996–97 marketing year, the Committee's recommendation and other available information, it is found that to revise § 985.215 (61 FR 11291) to change the salable quantity and allotment percentage for Native spearmint oil as effective in the interim final rule (62 FR 1246), as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule applies to spearmint produced during the 1996–97 marketing year, which ended May 31, 1997. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided in the interim final rule and no comments were received.

List of Subjects in 7 CFR Part 985

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

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR part 985 which was published at 61 FR 1246 on January 9, 1997, is adopted as a final rule without change.

Dated: June 4, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–15253 Filed 6–10–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–131, Special Conditions No. 25–ANM–128]

Special Conditions: LET Aeronautical Works Model L610G Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These final special conditions are issued for the LET Aeronautical Works Model L610G airplane. This airplane will have a novel or unusual design feature associated with the use of the landing gear fairing as an assist means during an emergency evacuation. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of 14 CFR part 25.

EFFECTIVE DATE: July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Frank Tiangsing, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA 1601 Lind Avenue SW, Renton WA 98055–4056, (425) 227–121.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1990, LET Aeronautical Works applied for a type certificate for the Model L610G airplane. On March 28, 1995, they applied for an extension of the original application in accordance with 14 CFR 21.17(d)(2). The L610G is a twin-engine, 40 passenger, high-wing airplane with a passenger emergency exit configuration consisting of one pair of Type I exits located at the aft end of the cabin and a pair of Type III exits under the wing near the middle of the cabin.

Type III exits are typically installed over the wings of the airplane. The are allowed by part 25 to have a 27-inch step-down from the exit sill to the wing. Additionally, if the escape route on the wing terminates at a point more than six feet above the ground, means must be provided to assist evacuees to reach the ground. If the termination point is less than six feet above the ground, then the assist means is not required.

Since this airplane is of a high-wing configuration, it is not practicable to incorporate overwing Type III exits. Part 25 permits non-overwing, non-floor level exits when certain conditions are satisfied. Included in these conditions is the requirement for an assist means for passengers and crew to egress from the airplane to the ground when the exit sill height is more than six feet. This assist means must be an automatically erected escape slide or equivalent, and must be self-supporting on the ground. The sill of the Type III exits on the L610G will be more than six feet above the ground; therefore, an assist means will be necessary.

LET has positioned the Type III exits above the landing gear fairing such that the fairing will form a surface for evacuees to use in lieu of what would be provided by a wing. The evacuees would then slide or jump off the fairing to the ground in much the same manner as they would off a wing trailing edge.

LET's use of the landing gear fairing as an assist means results in features which are characteristic of both escape slides and overwing evacuation routes; therefore, the requirements for either configuration are insufficient by themselves to assure that minimum standards are established.

These special conditions include requirements pertinent to both overwing and non-overwing exits, as well as additional criteria for this specific exit.

Type Certification Basis

Under the provisions of 14 CFR 21.17, LET must show the Model L610G meets the applicable provisions of part 25 as amended by Amendments 15–1 through 25–70 thereon, except as follows:

§ 25.365 Amendment 25–71
§ 25.571(e)(2) Amendment 25–72
§ 25.729 Amendment 25–75
§ 25.905(d) Amendment 25–72

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model 610G because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16. In addition to the applicable airworthiness regulation and special conditions, the LET Aeronautical Works Model L610G must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by 14 CFR 11.28 and 11.29(b), and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The Model L610G will incorporate the following novel or unusual design feature: a Type III exit will be located under each wing such that an evacuee using the exit would step out onto the main landing gear fairing. The evacuee would then slide or jump from the landing gear fairing to the ground.

14 CFR 25.809(f) requires all non-overwing exits more than six feet above

the ground to be equipped with an approved means to assist occupants in descending to the ground.

14 CFR 25.809(h) similarly requires all overwing exits having an escape route which terminates at a point more than six feet above the ground to be equipped with an assist means. The exit for the Model L610G will be more than six feet from the ground; however, the landing gear fairing surface will be within 27 inches of the lower exit sill. This distance corresponds to the allowable step-down for an overwing Typing III exit. The distance from the landing gear fairing to the ground is less than six feet.

14 CFR 25.809(f) also requires that assist means be automatically erected during exit opening. Strictly speaking, the landing gear fairing does not satisfy this requirement since opening the exit is not correlated to the availability of the assist means; however, since the fairing is a fixed piece of airplane structure it is always available for use.

The regulations also require that an assist means be self-supporting on the ground. This requirement has been interpreted to mean that the assist means rests on the ground when in use such that an evacuee does not have to jump to the ground from the bottom of the assist means. In the case of an overwing exit where the terminating edge of the escape route is less than six feet from the ground, it is likely that evacuees might have to jump a short distance from the wing to the ground. The Model L610G incorporates aspects of both of these exit arrangements, which are addressed in these special conditions.

Other features of the exit arrangement which involve both overwing and non-overwing exit considerations include marking, visibility, and width of the escape route. For the purposes of these special conditions, this exit will be treated as an overwing exit with respect to these requirements.

Other areas which are of particular concern for this unusual exit arrangement are the effectiveness of the exit in the event of landing gear collapse and the proximity of the escape route to the engines and wheel wells. Since a collapse of the landing gear could result in some form of collapse of the landing gear fairing, the exit must be demonstrated to be usable and provide for safe evacuation, considering all conditions of landing gear collapse.

Since the Type III exits are directly above the main landing gear, it is possible that a fire originating in the landing gear assembly could render such an exit unusable. Due to the design of the Model L610G, it is considered necessary to address the possibility that a fire on one side of the airplane could also render the opposite side unusable.

These special conditions are intended to provided requirements which result in an evacuation system that is as effective and safe as those envisioned by the regulations. Where appropriate, requirements have been drawn from existing regulations. In other cases, new requirements have been developed to preserve the level of safety which is inherent in the design of more conventional exit arrangements or assist means.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–96–4–NM for the LET Aeronautical Works Model L610G airplane, was published in the **Federal Register** on August 16, 1996. No comments were received.

Applicability

As discussed above, these special conditions are applicable to the LET Aeronautical Works Model L610G airplane. Should LET Aeronautical Works apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the LET Aeronautical Works L610G airplane.

1. The landing gear fairing must be established as an escape route in accordance with the dimensional, reflectance, and slip resistant surface requirements of § 25.803(e).

2. The step-down distance from the exit sill to the surface of the landing gear fairing, where an evacuee would make first contact, shall not exceed 27 inches (ref. § 25.807(a)(3)).

3. The assist means must provide for safe evacuation of occupants, considering all conditions of landing gear collapse. In addition, safe evacuation must be afforded via the Type III exit in the event of main landing gear non-deployment.

4. Exterior emergency lighting must be provided for the assist means and all areas of likely ground contact in accordance with §§ 25.812(g)(1) (i) and (ii), and § 25.812(h)(1), as amended through Amendment 25–58.

5. The assist means must be demonstrated to provide an adequate egress rate for the number of passengers requested. The passenger capacity, as permitted by § 25.807(c)(1), Table 1, may be reduced if satisfactory Type III exit performance cannot be demonstrated.

6. It must be shown that a landing gear fire occurring on one side of the airplane is unlikely to render the opposite exit unusable.

7. The assist means must be shown to be as reliable as an escape slide following exposure to the emergency landing conditions that may be encountered in service. In addition, safe evacuation from the airplane must be afforded following the crash conditions specified in § 25.561(b).

Issued in Renton, Washington, on June 3, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–15311 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

Distribution of Customer Property Related to Trading on the Chicago Board of Trade—London International Financial Futures and Options Exchange Trading Link

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') has adopted an additional amendment to Appendix B of its bankruptcy rules to govern the distribution of property where the debtor is a futures commission merchant (''FCM'') that maintains customer accounts that carry

or trade positions in Designated Chicago Board of Trade (''CBT'') Contracts at London International Financial Futures and Options Exchange (''LIFFE'') or Designated LIFFE Contracts at CBT (''Link Accounts'') as well as non-Link accounts. This new distributional framework is intended to assure that non-Link customers of such an FCM would not be adversely affected by a shortfall in Section 4d(2) segregated funds caused by the operation of the Link.[1]

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Lois J. Gregory, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5483.

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 22, 1997, the Commission published a proposed amendment to Appendix B of its bankruptcy rules to govern the distribution of property where the debtor is an FCM that maintains customer accounts that carry or trade positions in Link accounts as well as non-Link accounts, and allowed 15 days for comment thereon.[2] The Commission received one written comment in response to the proposal, from the Chicago Mercantile Exchange (''CME''), which expressed its view that it does not want the same approach automatically applied to linkage arrangements CME may develop with other exchanges. The Commission has considered this comment and has determined to adopt the additional amendment to Appendix B of its bankruptcy rules as it was proposed. The new Framework 2 governs the distribution of customer property related to trading on the CBT–LIFFE Link, specifically.

II. Trading in Link Contracts

The CBT, LIFFE and their respective clearing houses have commenced operation of a trading link (Link) whereby Designated CBT Contracts[3] are traded on LIFFE, initially cleared by the London Clearing House Limited (''LCH''), and transferred to the Board of Trade Clearing Corporation (''BOTCC''), and Designated LIFFE Contracts[4] are traded on the CBT, initially cleared by BOTCC and transferred to LCH.

In the case of Designated CBT Contracts traded on LIFFE, the U.S. FCM maintains a customer omnibus account with a LIFFE clearing member. Each day, LCH marks futures positions to a closing price, pays to and collects from the LIFFE clearing member the difference between trade price and mark price, pays and collects option premiums and, at the request of the LIFFE clearing member, nets positions prior to their transfer to BOTCC at approximately 10:00 a.m. Chicago time. Bank settlement commitments are required in response to instructions for Link variation obligations on trade date (''T''), with payment made to LCH on the next day (''T+1''). Also, if the CBT is closed for a holiday, LCH will hold positions in Designated CBT Contracts overnight and can call for margin. Property of the customers of the U.S. FCM that accrues to such customers as the result of such trades or contracts prior to their transfer to BOTCC or which is deposited to margin, guarantee or secure trades or contracts in Designated CBT Contracts at LIFFE is deemed to be ''Link property.'' During the interval before transfer back from LCH to BOTCC, Link property at LCH may for operational purposes be held in a foreign depository consistent with CFTC Advisory 87–5.[5]

In the case of Designated LIFFE Contracts traded on CBT, property received by the U.S. FCM to margin, secure or guarantee trades is included in the foreign futures and foreign options secured amount, pursuant to Commission Regulation 30.7. The Commission granted BOTCC its request for a no action position to permit certain excess foreign currency contained in such secured amount account and separately accounted for at the clearing organization to be used by FCM clearing members to meet original margin requirements for U.S. contracts under Section 4d(2) of the Act. Such excess property held in a combined BOTCC account but applied to margin requirements for U.S. contracts as Section 4d(2) property is also treated as ''Link property'' under Appendix B.

To the extent that positions in Designated CBT Contracts executed on LIFFE and property supporting or accruing from those positions are deemed to be customer property under Section 4d(2) of the Act, or certain foreign currency margin deposited in respect of Designated LIFFE Contracts is held in a Section 4d(2) clearing account, any customer net equity claim in respect of such Link property held by an FCM in a Link account would be treated as a customer net equity claim under Part 190 of the Commission's rules[6] and subchapter IV of chapter 7 of the Bankruptcy Code (the commodity broker liquidation provisions).[7] In the case of an FCM bankruptcy, the commodity broker liquidation provisions of the Bankruptcy Code and Part 190 of the Commission's rules provide for a pro rata distribution of assets in proportion to net equity claims among the Section 4d(2) customers whose accounts are carried by such FCM. Thus, absent some provision to the contrary, if a participating FCM defaulted due to losses in its Link-related account(s), non-Link customers could be forced to share in losses generated by a shortfall in Link property. To avoid that result, the new framework provides a rule of distribution that operates to subordinate claims for Link property to Section 4d(2) claims overall.

III. New Bankruptcy Distribution in the Context of the CBT–LIFFE Link

When the Commission adopted its Part 190 bankruptcy regulations,[8] it included an Appendix intended to facilitate the execution of a trustee's duties, forms concerning customer instructions for return of non-cash property and transfer of hedge contracts, and a proof of claim form. The Commission later adopted Appendix B to provide guidance to a trustee on the appropriate distribution of property where an FCM's customers cross-margined non-proprietary futures positions with certain securities positions.[9]

The Commission has now adopted an extension of Appendix B which will subordinate claims for Link property to claims for non-Link property when a shortfall in Link property is greater than the shortfall, if any, of non-Link related property. The new amendment follows the guiding principles of Appendix B to Part 190: to assure that generally there is pro rata distribution to customers of the customer property in the bankrupt FCM's commodity interest estate and that the satisfaction of non-Link customer claims are not adversely

[1] The proposal to establish a Link arrangement between CBT and LIFFE was approved by the Commission on May 6, 1997.

[2] 62 FR 19530

[3] Designated CBT Contracts currently consist of U.S. Treasury Bond futures and futures options. At a later date, it is anticipated that 10 year U.S. Treasury Note futures and futures options and 5 year U.S. Treasury Note futures and futures options will be added.

[4] Designated LIFFE Contracts currently consist of German Government Bond futures and futures options. At a later date, it is anticipated that British Gilt futures and futures options and futures options on the Italian Government Bond will be added.

[5] Comm. Fut. L. Rep., ¶ 23,997 (December 3, 1987).

[6] 17 CFR part 190.

[7] 11 U.S.C. 761–766.

[8] 48 FR 8716 (March 1, 1983).

[9] 59 FR 17468 (April 13, 1994).

affected by a shortfall in the pool of Link property. The new amendment will assure that non-Link claims will never receive less than they would have received in the absence of the Link, but the distributional rule will not require Link-related claims to be subordinated in every instance.

Under new Framework 2, a bankruptcy trustee handling the commodity interest estate of a bankrupt FCM with Link property first will determine the respective shortfalls, if any, in the pools of Link customer and non-Link customer segregated funds. The trustee then will calculate the shortfall in each pool as a percentage of the segregation requirement for the pool. In making this determination, any shortfall in Link property held overseas could be offset in whole or in part by any excess funds held by the FCM in segregation in the United States.

If there is: (1) No shortfall in either of the two pools; (2) an equal percentage shortfall in the two pools; (3) a shortfall in the non-Link pool only; or (4) a greater percentage of shortfall in the non-Link pool than in the Link pool, then the two pools of segregated funds would be combined and Link customers and non-Link customers would share pro rata in the combined pool.[10]

However, if there were (1) a shortfall in the Link pool only, or (2) a greater percentage of shortfall in the Link pool than in the non-Link pool, then the two pools of segregated funds would not be combined.[11] Rather, Link customers would share pro rata in the pool of Link segregated funds (including any excess funds held by the FCM in segregation in the U.S.), while non-Link customers would share pro rata in the pool of non-Link segregated funds. Further, if a pool of property initially would be treated as if it had a shortfall because frozen or otherwise unavailable as the result of government action, and later the freeze were lifted or funds became available, subsequent distribution would not be permitted to result in customers for whom funds were frozen receiving any greater distribution than a pro rata distribution for Section 4d (segregated funds) customers as a whole. To facilitate this distributional framework, two subclasses of customer accounts, a Link account and a non-Link account are recognized.

Like the existing distribution system for a bankrupt FCM with customer claims related to cross-margining, the new amendment would assure that non-Link customers would never receive less than they would have received in the absence of the Link. The new Framework to the Appendix is intended to eliminate the need for each customer who seeks to trade pursuant to the Link to execute a separate subordination agreement.

IV. Effective Date

The Administrative Procedure Act requires the publication of a final substantive rule not less than 30 days before its effective date unless otherwise provided by the agency for good cause found and published with the rule. *See* 5 U.S.C. 553(d)(3) (1994). The Commission is making this amendment effective as of June 11, 1997. The Commission has determined that good cause exists to make this amendment to Appendix B of its bankruptcy rules effective upon publication because a distributional framework for property of a U.S. FCM that participates in the currently operational CBT–LIFFE trading link must be put into place immediately in the unlikely event such FCM should become bankrupt.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. § 601–611 (1988), requires that agencies consider the impact of those rules on small businesses. These rules will affect distributees of a bankrupt FCM's estate where the FCM has entered into a Link Clearing Agreement with a clearing member of LIFFE to transfer or accept the transfer of positions in Designated Link Contracts. The Chairperson, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. The new Framework will eliminate the need for customers of FCMs who wish to participate in the Link to execute a subordination agreement. Further, the distributional framework is intended to assure that non-Link customers of such FCM would not be disadvantaged by a shortfall in the pool of Link funds. Persons participating in the Link will be provided with special risk disclosure which includes disclosure covering the treatment of Link customer funds. The adoption of this bankruptcy distributional rule merely provides a framework for fairly distributing customer funds in the event of an FCM bankruptcy. As customers elect to undertake Link transactions customers need not take the risks of the Link if upon reviewing the relevant disclosures they do no elect to do so, thus the inception of Framework 2 of Appendix B. It should not in itself have a significant economic impact but rather should operate to facilitate the Link arrangement and to prevent unintended economic consequences to customers not electing to participate in the Link.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1996)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this rule has no burden, the group of rules (3038–0021) of which this is a part has the following burden:

Average burden hours per response—0.35
Number of Respondents—802
Frequency of response—on occasion

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

List of Subjects in 17 CFR Part 190

Bankruptcy.

Accordingly, the Commission pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 1a, 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 thereof, 7 U.S.C. 1a, 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1994), and in the Bankruptcy Code and, in particular Sections 362, 546, 548, 556 and 761–766 thereof, 11 U.S.C. 362, 546, 548, 556 and 761–766 (1994), hereby amends Part 190 of Chapter I of title 17 of the Code of Federal Regulation as follows:

PART 190—BANKRUPTCY

1. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23 and 24 and 11 U.S.C. 362, 546, 548, 566 and 761–766.

2. Part 190 is amended by adding at the end of Appendix B the following Framework 2:

Appendix B to Part 190—Special Bankruptcy Distributions

* * * * *

Framework 2—Special Distribution of Customer Funds When FCM Participated in the Trading of Designated Link Contracts Pursuant to the CBT–LIFFE Link

The Commission has established the following distributional convention with

[10] See examples 1, 2, 5 and 6 of Appendix B to part 190, Framework 2.

[11] See examples 3 and 4 of Appendix B to part 190, Framework 2.

respect to Section 4d customer funds held by a futures commission merchant (FCM) that participates in the trading of Chicago Board of Trade (''CBT'')-designated contracts executed on the London International Financial Futures and Options Exchange (''LIFFE'') or LIFFE-designated contracts executed on CBT (''Designated Link Contracts'') pursuant to the CBT–LIFFE Link (''Link'') which shall apply if customers of the FCM have been provided with a notice which makes reference to this distributional rule and the form of such notice has been approved by the Commission by rule, regulation or order. The maintenance of property in a Link account would result in subordination of the claim for such property to certain non-Link customer claims in certain circumstances. This results in subclasses of customer accounts required to be segregated for purposes of Section 4d(2) of the Commodity Exchange Act: a Link account and a non-Link account (a person could hold each type of account), and results in two pools of customer segregated funds: a Link pool and a non-Link pool.

In the event that there is a shortfall in the non-Link pool of customer segregated funds, and there is no shortfall in the Link pool of customer segregated funds, customer net equity claims, whether or not they arise out of the Link subclass of accounts, will be combined and will be paid pro rata out of the total pool of available Link and non-Link customer funds. In the event that there is a shortfall in the Link pool of customer segregated funds, and there is no shortfall in the non-Link pool of customer segregated funds, customer net equity claims arising from the non-Link subclass of accounts shall be satisfied from the non-Link customer segregated funds, and customer net equity claims arising from the Link subclass of accounts shall be paid from the Link customer segregated funds (and, if applicable, any excess funds held by the FCM in segregation in the U.S.). Furthermore, in the event that there is a shortfall in both the non-Link and Link pools of customer segregated funds: (1) If the non-Link shortfall as a percentage of the segregation requirement in the non-Link pool is greater than or equal to the Link shortfall as a percentage of the segregation requirement in the Link pool, customer net equity claims will be paid pro rata; and (2) if the Link shortfall as a percentage of the segregation requirement in the Link pool is greater than the non-Link shortfall as a percentage of the segregation requirement of the non-Link pool, non-Link customer net equity claims will be paid pro rata out of the available non-Link segregated funds, and Link customer net equity claims will be paid pro rata out of the available Link segregated funds. In this way, non-Link customers would never be adversely affected by a Link shortfall.[1]

The following examples illustrate the operation of this distributional convention. The examples assume that the FCM has two customers, one with exclusively Link accounts and one with exclusively non-Link accounts. In practice, the FCM would have a customer omnibus account with a LIFFE clearing member or would itself be a LIFFE clearing member with its own customer omnibus account. Positions in Designated CBT Contracts traded at LIFFE and initially cleared by LCH would be allocated to this customer omnibus account; following the transfer of the positions via the Link, the FCM would allocate the positions and any gains or losses to its customers' accounts. Accordingly, a customer who trades Designated CBT Contracts at LIFFE may have the portion of his account which reflects his activity in the customer omnibus account at LIFFE deemed a Link account and the remainder of the account a non-Link account. Effectively this will result in the customer having two claims—one against Link property and one against non-Link property.[2]

	Non-link	Link	Total
1. Sufficient Funds to Meet Non-Link and Link Customer Claims:			
Funds in segregation	150	150	300
Segregation Requirement	150	150	300
Shortfall (dollars)	0	0	
Shortfall (percent)	0	0	
Distribution	150	150	300
There are adequate funds available, and both the non-Link and Link customer claims would be paid in full.			
2. Shortfall in Non-Link Only:			
Funds in segregation	100	150	250
Segregation Requirement	150	150	300
Shortfall (dollars)	50	0	
Shortfall (percent)	50/150=33.3	0	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	125	125	
Distribution	125	125	250
Due to the non-Link account, there are insufficient funds available to meet both the non-Link and the Link customer claims in full. Each customer will receive his or her pro rata share of the funds available, or 50% of the $250 available, or $125.			
3. Shortfall in Link Only:			
Funds in segregation	150	100	250
Segregation Requirement	150	150	300
Shortfall (dollars)	0	50	
Shortfall (percent)	0	50/150=33.3	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	125	125	
Distribution	150	100	250

[1] Because Link property will be located offshore, it is possible that such property could be frozen by governmental action or become unavailable as the result of sovereign events. In that situation, should such property subsequently become available, the Link property account may acquire no greater distributional share than Section 4d(2) (segregated funds) customers generally.

[2] Certain other property of the customers of the U.S. FCM also will be treated as ''Link property'' and part of the Link account for purposes of this Framework 2. In the case of Designated LIFFE Contracts traded on CBT, property received by the U.S. FCM to margin, guarantee or secure trades is included in the foreign futures and foreign options secured amount, pursuant to Commission Regulation 30.7. The Order approving the CBT/LIFFE Link permits BOTCC to commingle certain foreign currency with a Section 4d(2) account to permit certain property in excess of the required secured amount to be used to meet original margin requirements for U.S. contracts under Section 4d(2) of the Act. Such excess property held in a ''combined'' account but applied to margin requirements for U.S. contracts as Section 4d(2) property would also be ''Link property'' under this Framework.

	Non-link	Link	Total

Due to the Link account, there are insufficient funds available to meet both the non-Link and Link Customer claims in full. Accordingly, the Link funds and non-Link funds are treated as separate pools, and the non-Link customer will be paid in full, receiving $150, while the Link customer would receive the remaining $100.

4. Shortfall in Both, Link Shortfall Exceeding Non-Link Shortfall:

Funds in segregation	125	100	225
Segregation Requirement	150	150	300
Shortfall (dollars)	25	50	
Shortfall (percent)	25/150=16.7	50/150=33.3	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	112.50	112.50	
Distribution	125	100	225

There are insufficient funds available to meet both the non-Link and Link customer claims in full, and the Link shortfall exceeds the non-Link shortfall. The non-Link customer will receive $125 available with respect to non-Link claims while the Link customer will receive the $100 available with respect to the Link claims.

5. Shortfall in Both, With Non-Link Shortfall Exceeding Link Shortfall:

Funds in segregation	100	125	225
Segregation Requirement	150	150	300
Shortfall (dollars)	50	25	
Shortfall (percent)	50/150=33.3	25/150=16.7	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	112.50	112.50	
Distribution	112.50	112.50	225

There are insufficient funds available to meet both the non-Link and Link customer claims in full, and the non-Link shortfall exceeds the Link shortfall. Each customer would receive 50% of the $225 available, or $112.50.

6. Shortfall in Both, Non-Link Shortfall=Link Shortfall:

Funds in segregation	100	100	200
Segregation Requirement	150	150	300
Shortfall (dollars)	50	50	
Shortfall (percent)	50/150=33.3	50/150=33.3	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	100	100	
Distribution	100	100	200

There are insufficient funds available to meet both the non-Link and the Link customer claims in full, and the non-Link shortfall equals the Link shortfall. Each customer will receive 50% of the $200 available, or $100.

7. Shortfall in Link Account Caused by Freeze That is Subsequently Lifted, Where Non-Link Account Had Actual Shortfall But Link Account Did Not Subsequent to Lifting of Freeze Order:

Funds in segregation	100	Frozen	100
Segregation Requirement	150	150	300
Shortfall (dollars)	50	150	
Shortfall (percent)	50/150=33.3	150/150=100	
Pro Rata (percent)	150/300=50	150/300=50	
Pro Rata (dollars)	50	50	
Initial Distribution	100	0	100
Freeze Lifted: Funds Previously Frozen	0	150	150
Subsequent Distribution	25	125	
Total Distribution	125	125	250

Through the time of the initial distribution, this situation would follow the pattern of Example 4 because the shortfall in the Link account was larger. After the freeze was lifted, it would follow the pattern of Example 2 because the shortfall in the non-Link account was larger.

These examples illustrate the principle that Pro rata distribution across both accounts is the preferable approach except when a shortfall in the Link account could harm non-Link customers. Thus, pro rata distribution occurs in Examples 1, 2, 5 and 6. Separate treatment of the Link and non-Link accounts occurs in Examples 3 and 4. In Example 7, separate treatment occurs where the funds are frozen. It is adjusted to become pro rata treatment after the freeze is lifted.

Issued in Washington, D.C. on June 5, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–15246 Filed 6–10–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 97–50]

RIN 1515–AC17

Archaeological and Ethnological Material From Peru

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of import restrictions on certain archaeological material of Peru's pre-Columbian past dating to the Colonial period and certain Colonial ethnological materials of Peru. These restrictions are being imposed pursuant to an agreement between the United States and Peru which has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document also contains the Designated List of Archaeological and Ethnological Material which describes the articles to which the restrictions apply. This document also amends the Customs Regulations by removing the listing of Peru and identification of the cultural property to which emergency import restrictions have been imposed. Articles which had been protected under that provision are also covered under the new listing.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: *Legal Aspects:* Donnette Rimmer, Intellectual Property Rights Branch (202) 482–6960.

Operational Aspects: Louis Alfano, Commercial Enforcement, Office of Field Operations (202) 927–0005.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the ''Convention on Cultural Property Implementation Act'' (Pub.L. 97–446, 19 U.S.C. 2601 *et seq.*) (''the Act''). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. The U.S. is, to date, the only major art importing country to implement the 1970 Convention.

During the past several years, import restrictions have been imposed on a emergency basis on archaeological and ethnological artifacts of a number of signatory nations as a result of requests for protection received from those nations.

Peru has been one of the countries whose archaeological material has been afforded emergency protections. In T.D. 90–37, § 12.104g(b), Customs Regulations, was amended to reflect that archaeological material from the Sipan Archaeological Region forming part of the remains of the Moche culture received import protection under the emergency protection provisions of the Act. This protection was extended in T.D. 94–54. Import restrictions are now being imposed on certain pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru as the result of a bilateral agreement entered into between the United States and Peru. This agreement was entered into on June 9, 1997, pursuant to the provisions of 19 U.S.C. 2602. Protection of the archaeological material from the Sipan region previously reflected in § 12.104g(b) will be continued through the bilateral agreement without interruption. Accordingly, § 12.104g(a) of the Customs Regulations is being amended to indicate that restrictions have been imposed pursuant to the agreement between the United States and Peru and the emergency import restrictions on certain archaeological material from Peru is being removed from § 12.104g(b) as those restrictions are now encompassed in § 12.104g(a).

This document contains the Designated List of Archaeological and Ethnological Material representing the cultures of the native peoples of Peru which are covered by the agreement. Importation of articles on this list is restricted unless the articles are accompanied by an appropriate export certificate issued by the Government of Peru.

In reaching the decision to recommend extension of protection, the Deputy Director, United States Information Agency, determined that, pursuant to the requirements of the Act, with respect to categories of pre-Columbian archaeological material proposed by the Government of Peru for U.S. import restrictions, ranging in date from approximately 12,000 B.C. to A.D. 1532, and including, but not limited to, objects comprised of textiles, metals, ceramics, lithics, perishable remains, and human remains that represent cultures that include, but are not limited to, the Chavin, Paracas, Vincus, Moche (including objects derived from the archaeological zone of Sipan), Viru, Lima, Nazca, Recuay, Tiahuanaco, Huari, Chimu, Chancay, Cuzco, and Inca; that the cultural patrimony of Peru is in jeopardy from the pillage of these irreplaceable materials representing pre-Columbian heritage; and that with respect to certain categories of ethnological material of the Colonial period, ranging in date from A.D. 1532 to 1821, proposed by the Government of Peru for U.S. import restrictions but limited to (1) objects directly related to the pre-Columbian past, whose pre-Columbian design and function are maintained with some Colonial characteristics and may include textiles, metal objects, and ceremonial wood, ceramic and stone vessels; and (2)

objects used for religious evangelism among indigenous peoples and including Colonial paintings and sculpture with distinct indigenous iconography; that the cultural patrimony of Peru is in jeopardy of pillage of these irreplaceable materials as documented by the request.

List of Designated Archaeological and Ethnological Material From Peru

Pursuant to a Memorandum of Understanding between the United States and the Republic of Peru, the following contains descriptions of the cultural materials for which the United States imposes import restrictions under the Convention on Cultural Property Implementation Act (Pub. L. 97–446), the legislation enabling implementation of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The Designated List includes archaeological materials known to originate in Peru, ranging in date from approximately 12,000 B.C. to A.D. 1532, and including, but not limited to, objects comprised of textiles, metals, ceramics, lithics, perishable remains, and human remains that represent cultures that include, but are not limited to, the Chavin, Paracas, Vicús, Moche, Virú, Lima, Nazca, Recuay, Tiahuanaco, Huari, Chimú, Chancay, Cuzco, and Inca cultures. The Designated List also includes certain categories of ethnological materials from Peru dating to the Colonial period (A.D. 1532–1821), limited to: (1) objects directly related to the pre-Columbian past, whose pre-Columbian design and function are maintained with some Colonial characteristics and may include textiles, metal objects, and ceremonial wood, ceramic and stone vessels; and (2) objects used for religious evangelism among indigenous peoples and including Colonial paintings and sculpture with distinct indigenous iconography. The Designated List below also subsumes those categories of Moche objects from the Sipán Archaeological Region of Peru for which emergency import restrictions have been in place since 1990. With publication of the Designated List below, protection of the Sipán material continues without interruption.

The list is divided into seven categories of objects:

I. Pre-Columbian Textiles
II. Pre-Columbian Metals
III. Pre-Columbian Ceramics
IV. Pre-Columbian Lithics
V. Pre-Columbian Perishable Remains
VI. Pre-Columbian Human Remains
VII. Ethnological Objects
  A. Objects Directly Related to the Pre-Columbian Past
  B. Objects Used for Religious Evangelism Among Indigenous Peoples

What follows immediately is a chart of chronological periods and cultural classifications currently widely used for identifying archaeological remains in Peru. All dates are approximate.

	Rowe	Lumbreras
1440–1532 A.D	Late Horizon	Inca Empire.
1100–1440 A.D	Late Intermediate Period	Regional states and kingdoms.
600–1100 A.D	Middle Horizon	Huari Empire.
200 B.C.–600 A.D	Early Intermediate Period	Regional Cultures.
1000–200 B.C	Early Horizon	Middle and Late Formative.
1700–1000 B.C	Initial Period	Early Formative.
2500–1800 B.C	Late Pre-ceramic	Late Archaic.
4500–2500 B.C	Middle Pre-ceramic	Middle Archaic.
6000–4500 B.C	Early Pre-ceramic	Early Archaic.
12000–6000 B.C	Early Pre-ceramic	Hunter-Gatherers.

The following Designated List is representational and may be amended as appropriate.

I. Pre-Columbian Textiles

Textiles representing these principal cultures and main classes of objects:

A. Chimu

Pillow—Piece of cloth sewn into a bag shape and stuffed with cotton of vegetal fibers. Generally the cloth is made in tapestry technique. 60 cm. x 40 cm.

Painted Cloth—Flat cloth of cotton on which designs are painted. Range between 20 cm. and 6.1 m.

Headdress—Headdresses are usually made of feathers, especially white, green, and dark brown, which are attached to cloth and fitted to a cane or basketry frame. Feathers on the upper part are arranged to stand upright.

Feather Cloth—Cloth decorated with bird feathers, especially panels and tunics. They vary in shape and size; generally they depict geometric motif and volutes. Vary from 20 cm.—3 m. in length, and may be up to 1.5 m. in width.

Panels—Chimu panels may be of two types: tapestry weave or plain-weave cotton. Isolated anthropomorphic designs predominate and may be associated with zoomorphic motifs. Vary from 20 cm. x 20 cm. to 2.0 m. x 1.8 m.

Belts and Sashes—Generally made in tapestry technique, and predominantly of red, white, ocher, and black. As with other Chimu textiles, they generally depict human figures with rayed headdresses. Up to 2.20 m. in length.

B. Chancay

Loom—Looms are commonly found in Chancay culture, sometimes with pieces of the textile still on the loom. Often these pieces of cloth show varied techniques and are referred to as ''samples.'' 50 cm. x 20 cm.

Loincloth—Triangular panels of cloth with tapestry woven borders.

Dolls—Three dimensional human figures stuffed with vegetal fiber to which hair and other decorations are added. Sometimes they depict lone females; in other cases they are arranged in groups. Most important, the eyes are woven in tapestry technique; in fakes, they have embroidered features. Usually 20 cm. tall and 8 cm. wide.

False Head—In Chancay culture, false heads are made on a cotton of vegetal fiber cushion covered with plain-weave cloth, decorated with shells, beads, metal, wood, or painting to depict facial features. They sometimes have real hair. Usually 30 cm. x 35 cm.

Unku/Tunic—Varied sizes and styles. Some are in plain weave, others in gauze, still others are in tapestry technique or brocade. They are recognized by their iconography, which includes geometric motifs, birds, fish, plants, and human figures. Miniatures are tiny; regular size examples are about 50 cm. x 50 cm.

Belt—Chancay belts are multicolored, with geometric motifs rendered in tapestry technique. Sometimes the ends are finished in faux-velour technique. 2 m. x 5 cm.

Panels—Chancay panels may be made in tapestry technique or may be painted on plain weave cloth. In these latter cases, the panels may depict fish,

parrots, monkeys, viszcachas, felines, foxes, and human figures. Vary in size from miniatures to 4 m. x 2 m.

Standards—Chancay standards are supported on a frame of straight reeds covered with cotton cloth which is painted in anthropomorphic designs in ochers and black. Sometimes they have a handle. 20 cm. x 20 cm.

Gauze—Pieces of cloth made in openwork gauze technique, with very fine cotton threads. May have embroidered designs in the same thread that depict birds or other flora and fauna. Usually 80 cm. x 80 cm.; some are smaller.

C. Nazca

Three-Dimensional Cloth—Cloth made in three dimensions, using needles. Of many and bright colors, knitted in long strips. Each figure is approx. 5 cm. long x 2 cm. wide.

Unku/Tunic—These include miniature and regular-sized tunics. They are generally of one color, mostly light brown. The neck edges, hem, and fringes have multicolored geometric designs. Fringes end in woven braids. Vary in size from miniatures up to approx. 1.5 m. x .8 m.

Bags—There are bags of many sizes, from miniatures to large ones, generally with a narrow opening and a wide pouch. Some are decorated with fringe. Their iconography resembles the unku (tunic), stylized designs in yellow, red, and dark and light blue.

Sash—Nazca sashes are made on special looms. Their ends are decorated with plied fringe.

Tie-Dye (Painted) Cloth—Most common are those made in the tie-dye technique, in which the textile is knotted and tied before it is dyed, so that when it is untied, there are negative images of diamonds, squared, and concentric dots. Most common are orange, red, blue, green, and yellow colors. Vary from approx. 20 cm. x 20 cm. to 2.0 m. x 1.8 m.

Patchwork Cloth—Variant of the Tie-Dye cloth, in which little panels are made and later sewn together so that the resulting textile includes rectangles of tie-dyed panels of different colors. The cloth may have a decorative fringe. Vary from 20 cm. x 20 cm. to 2.0 m. x 1.8 m.

Wara/Loincloth—Generally made of a flat piece of cloth with colorful borders depicting stylized geometric motifs. They terminate in fringe. 50 cm. x 30 cm.

Fans—The frame is of vegetal fiber provided with twisted cord into which feathers are inserted. Commonly two colors of feathers are attached in this way, such as orange and green, or yellow and blue. 30 cm. x 20 cm.

D. Huari

Panel—Characterized by a complex and abstract iconography. Made in tapestry technique with a range of colors, including browns, beiges, yellows, reds, oranges, and greens. Vary from 20 cm. x 20 cm. to 2.0 m. x 1.8 m.

Unku/tunic—Large with an abstract and geometric iconography. Commonly the designs repeat in vertical bands. Generally these tunics have a cotton warp and camelid fiber weft. Some are so finely woven that there are 100 threads per cm^2. Vary in size from miniatures up to 1.5 m. x 80 cm.

Caps—Most common are the so-called ''four-corner hats'' made in a faux-velour technique that results in a velvety texture. On the base cloth, small tufts of brightly-colored wool are inserted.

Vincha/headband or sashes—These garments are made in tapestry weave or faux-velour technique and depict geometric motifs.

Bags—Bags have an opening which is somewhat narrower than the body, with designs depicting felines, camelids, human faces, and faces with animal attributes.

E. Paracas

Esclavina/Small shoulder poncho—Paracas esclavinas are unique for their decoration with brightly colored images in Paracas style such as birds, flowers, animals, and human figures. Vary in size from miniatures up to 60 cm. x 30 cm.

Mantle—Paracas mantles can be divided into five types, based on their decoration. All are approximately 2.5 m. x 1.6 m.

a. Mantles with a plain field and woven borders;

b. Mantles with decorative (embroidered) borders and plain field;

c. Mantles with decorative (embroidered) borders and a decorative stripe in the center field;

d. Mantles with embroidered borders and center field embroidered in checkerboard-fashion;

e. Mantles with embroidered borders and alternating diagonals of embroidered figures in the center field.

Gauzes—Paracas gauzes are made of one color, such as lilac, yellow, red, or grey. They are generally rectangular and have a soft and delicate texture. Approx. 1 m. x 1 m.

Panels—Paracas panels are generally of cloth and may have been used for utilitarian purposes. They are generally undecorated. Vary from 20 cm. x 20 cm. to 2 m. x 1.8 m.

Skirts—Paracas skirts are of two types: some are plain, made of cotton with decoration reserved for the ends; there are others that are elaborately embroidered with colorful images rendered in wool. These often form sets with mantles and other garments. Skirts are rectangular and very wide, with two fringed ties. 3 m. long and 70 cm. wide.

Wara/Loincloth—Made of cotton, not as large as skirts, and may have embroidered edges.

Slings—Paracas slings are decorated in Cavernas style, made of vegetal fiber, and are of small size, generally 1.5 m. x 5 cm.

Furs—There are numerous examples of animal skins reported from Paracas contexts, including the skins of the fox, vizcacha, guinea pig. Most are poorly preserved.

F. Moche

Bags—Moche bags are usually square, small, and have a short handle. They are made in tapestry technique with brightly-woven designs. Principal colors used are white, black, red, light blue, and ocher.

Panels—Recognizable by their iconography, these tapestry-technique panels may show people on balsa-reed rafts surrounded by a retinue. They are rendered in a geometric fashion, and are outlined in black and shown in profile. Scenes of marine life and fauna predominate. Vary from 20 cm. x 20 cm. to 2 m. x 1.8 m.

Ornamental canes—Small canes are ''woven'' together in a twill technique using colorful threads that depict anthropomorphic designs. Approx. 10 cm. x 10 cm.

G. Lambayeque

Panels—Lambayeque panels are small, made in tapestry technique, of cotton and wool. Vary from 20 cm. x 20 cm. to 2 m. x 1.8 m.

H. Inca

Sling—There are two types of Inca slings. Ceremonial ones are oversize and elaborately decorated with geometric motifs, with long fringes. The other type is smaller and utilitarian, almost always with decoration only on the pouch and far ends. The decoration is geometric and the slings have fringed ends.

Unku/tunic—Inca tunics are well-made and colorful, mostly in red, olive green, black, and yellow. Decorative elements may be arrayed checkerboard fashion and are found on the upper and lower part of the garment. Vary in size from miniatures up to approx. 1.5 m. x 80 cm.

Bags—Recognized by their bright colors, they have an opening that is narrower than the body and a wide pouch with long fringe and handle. Vary

in size from miniatures up to 30 cm. x 20 cm.

Panels—Some are made in cotton using the double-cloth technique, based on light brown and beige. Lines of geometrically-rendered llamas predominate. Vary in size from 20 cm. x 20 cm. to 2 m. x 1.8 m.

Mantles—Inca mantles are of standard dimensions, sometime more than a meter long, generally rectangular. They are multi-colored and made of cotton warp and wool weft. Most common colors are dark red, olive green, white, and black. Generally 2.5 m. x 1.6 m.

Kipu/quipu—Inca quipus (knotted string mnemonic devices) are made of cotton and wool cords, sometimes with the two fibers plied together. Rarely is their original color preserved, though sometime one sees light blues and browns. Some are wrapped with colorful threads on the ends of the cords. 80 cm. x 50 cm.

II. Pre-Columbian Metal Objects

A. Idols

Anthropomorphic or zoomorphic figures, some of which are hollow and others which are solid. They may be of gold and silver, they may be gilded, or of copper, or bronze. Sizes vary from 2 cm.—20 cm. in height.

B. Small Plaques

Thin sheets of gold, silver, copper, or gilded copper, used to cover the body and made in pieces. They have repoussé or punched designs on the edge and middle of the sheet. Average .6 cm in height.

C. Axes

Almost always T-shaped and solid. There are also axes in a traditional axehead shape. May be of bronze or copper.

D. Mace Heads

These come in a great variety of shapes, including star-shaped, flat, or of two or three levels. They may be made of copper or bronze. Most have a central hole through which a wooden handle was affixed.

E. Musical Instruments

Trumpets: Wind instrument with a tubular body and flaring end, fastened at the joint. May be of copper or bronze.

Bells: Of varying shapes and materials (including gold, silver, copper, and silver-plated copper).

Conos: Instrument shaped from a sheet of hammered metal, with or without a clapper. Can be of copper or silver. Up to .5 m. in height.

Rattles: Musical instrument with a central hold to accommodate a handle. May be of copper or bronze. Vary from 6 cm.–25 cm. in height.

Jingle Bells: Spherical bells with an opening on the lower part and a handle on the upper part so they can be suspended from a sash or other garment. They contain a small stone or a little ball of metal. The handles may be decorated. Jingle bells may decorate another object, such as rhythm sticks, and may be of gold, silver, or bronze. Used in all pre-Columbian cultures of Peru.

Chalchachas: Instruments shaped like a bivalve with repoussé decoration. Made of copper.

Quenas (flutes): Tubular instruments, generally of silver, with perforations to vary the tone.

F. Knives

Knives vary depending on their provenance. They can have little or no decoration and can be of different metals or made of two metals. The best known are the *tumis* from the Sican culture, which have a straight or trapezoidal handle and a half-moon blade. The solid handle may have carved or stamped designs. Generally made of gold, silver, or copper. In ceremonial examples, the blade and upper part may depict an anthropomorphic figure standing or seated, or simply a face or mask with an elaborate headdress, earspools, and inset semi-precious stones. Tumi handles can be triangular, rectangular, or trapezoidal, and blades can be ovaloid or shaped like a half-moon.

G. Pins

With a straight shaft and pointed end, pins can be flat or cylindrical in cross-section. Most are hammered, and some are hollow. They can be of gold, silver, copper, bronze, gold-plated silver or may be made of two metals. Some pins are zoomorphic; others have floral images, and still others depict fish. Some have a round head; others have a flat, circular head; still others have the shape of a half-moon. There are hollow-headed rattle pins; others have solid anthropomorphic images. Most are up to 50 cm. in length, with heads that are up to 10 cm. in diameter. The small pins are about 5 cm. in length.

H. Vessels

There are a variety of metal vessels; they may be made of gold, silver, gilded silver, gilded copper, silver-covered copper, and bronze. There are miniatures, as well as full-size vessels. Such vessels are known from all cultures. Forms include beakers, bowls, open plates, globular vessels, and stirrup-spout bottles. The exact form and surface decoration varies from culture to culture. Shapes include beakers, bowls, and plates. Average .5 m.–.3 m. in height.

I. [Reserved]

J. Masks

May be made of gold, silver, gilded silver, copper, gilded copper, silver-covered copper, or may be made of two metals. They vary greatly in shape and design. The best known examples come from the following cultures: Moche, Sican, Chimú, Huari, Inca, Nazca, and Chincha. The northern coast examples often have insets of shell, precious or semi-precious stones, and may have plant resins to depict the eyes and teeth. Almost all examples that have not been cleaned have a surface coloring of red cinnabar. Examples from Sican measure up to 49 cm. in width by 29 cm. in height. Miniature examples can measure 7 cm. × 5 cm. Miniature masks are also used as decorations on other objects. Copper examples generally show heavy oxidation.

K. Crowns

Thin or thick sheets of metal made to encircle the head. They may be of silver, gold, copper, gilded silver, silver-covered copper, or may be made of two metals. Some examples have a curved central part, and may be decorated with pieces of metal and real or artificial feathers that are attached with small clamps. Found in all cultures.

L. Penachos (Stylized Metal Feathers)

Stylized metal feathers used to decorate crowns. May be made of gold, silver, copper, or silver-covered copper.

M. Tocados (Headdresses)

Headdress ornaments which may be simple or complex. They may be made of one part, or may include many pieces. Found in all cultures. They may take the form of crowns, diadems, or small crowns. They may have two stylized feathers to decorate the crown and to hold it to the hair (especially the Chimu examples). Paracas examples generally have rayed appendages, with pierced disks suspended from the ends of the rays.

N. Turbans

Long pieces of cloth that are wrapped around the head. Metal ornaments may be sewn on turbans. Found in all cultures; the metal decorations and the cloth vary from culture to culture.

O. Spoons

Utilitarian object of gold, silver, or copper.

P. Lime Spatulas

Miniature spatula: a straight handle has a slightly spoon-shaped end. The handle may have an anthropomorphic figure. Made of gold, silver, or copper.

Q. Ear Spools

Ear spools are generally made of a large cylinder which fits through the earlobe and an even larger disk or decorative sheet on one side. The disk may be decorated with repoussé, stamped, or engraved designs, or may have inset stone or shell. May be made of gold, silver, copper, or made of two metals. Ear spools are found in all cultures. The largest measure up to 15 cm. height; typical diameter: 5 cm.–14 cm.

R. Nose Ornaments

Of varied shapes, nose ornaments can be as simple as a straight tube or as complex as a flat sheet with repoussé design. In the upper part, there are two points to attach the ornament to the septum. They may be of gold, silver, or copper or may be made of two metals.

S. Earrings

Decoration to be suspended from the earlobes.

T. Rings

Simple bands with or without designs. Some are two bands united by filigree spirals. Some have inset stones. May be of silver, gold, copper, or alloys.

U. Bracelets

Bracelets are made of sheets of metal with a straight or slightly trapezoidal shape, with stamped or repoussé designs. Some are simple, narrow bands. Found in all cultures and with varied designs. May be of gold, silver, bronze, or alloys of copper. Generally 4 cm.–14 cm. in width.

V. Necklaces

Necklaces are made of beads and/or small carved beads. May be of shell, bone, stone, gold, silver, copper, or bronze. The beads are of varied shapes. All beads have two lateral perforations to hold the cord.

W. Tweezers

Made in one piece, with two identical ends and a flexed central handle. They are of varied shapes, including triangular, trapezoidal, and ovaloid. The middle of the handle may have a hole so the tweezers can be suspended from a cord.

X. Feather Carrier

Conical objects with a pointed, hollow end, into which feathers, llama skin, or monkey tails are inserted and held in place with tar. They may be made of gold, silver, or gilded or silver-plated copper.

III. Pre-Columbian Ceramics

A. Chavín

Date: 1200–200 B.C.

Characteristics

Decoration: A grey-black color. Incised, modeled, and high and low-relief are combined to work out designs in grays and browns. The surface may also juxtapose polishing and matte finish in different design zones.

Forms: Bottles, plates, and bowls.

Size: 5 cm.–30 cm.

Identifying: Characteristic traits of Cupisnique and Chavín ceramics include: globular body with a flat base and stirrup spout; thick neck with an obvious and everted lip. Chavin style also includes long-necked bottles, bowls with flaring walls, and highly-polished relief-decorated surfaces.

Styles: Chavin influence is seen in Cupisnique, Chongoyape, Poemape, Tembladera, Patapo, and Chilete.

B. Vicús

Date: 900 B.C.–A.D. 500

Characteristics

Decoration: Geometric designs in white on red, made using negative technique. There are also monochrome examples.

Forms: Anthropomorphic, zoomorphic and plant-shaped vessels. Some have a double body linked by a tube or common opening.

Size: 30 cm.–40 cm. tall.

C. Virú or Gallinazo

Characteristics

Decoration: Negative technique over orange background.

Forms: Faced anthropomorphic and zoomorphic vessels, face bottles for daily use in dwellings, ''cancheros'' (type of pot without a neck and with a horn-shaped handle).

Size: Up to 15 cm. high.

Identifying: The surface is basically orange; the vessels have a truncated spout, an arched bridge (like a tube) as handle, and geometric symbols in negative technique (concentric circles, frets and wavy lines). When the vessels represent a face, the eyes are like ''coffee beans,'' applied on the surface and with a transverse cut.

D. Pucara

Date: 300 B.C.–300 A.D.

Characteristics

Decoration: Slip-painted and incised. Modeled elements include stylized felines and camelids, along with an anthropomorphic image characteristically depicted with a staff in each hand. Vessels are typically decorated in yellows, black, and white on the red background of the vessel. Designs are characteristically outlined by incision. There may be modeled decoration, such as feline heads, attached to the vessels.

Shapes: Tall bowls with annular ring bases predominate, along with vessels that depict anthropomorphic images.

Size: Bowls are up to 20 cm. in diameter and 20 cm. in height.

E. Paracas

Date: Developed around 200 B.C.

Characteristics

Vessels are typically incised, with post-fired resin painting on a black background.

Size: 10 cm.–15 cm. high

F. Nazca

Date: A.D. 100–600.

Characteristics

Color: Typically very colorful, with a range of slips including cream, black, red, violet, orange, gray, all in a range of tones.

Slip: Background slip is generally cream or orange.

Shapes: Cups, bowls, beakers, plates, double-spout-and-bridge bottles, anthropomorphic figures, and musical instruments.

Decoration: Realistic drawings of fantastic creatures, including the ''Flying God.'' In late Nazca, bottles are broader and flatter and the designs are arrayed in broad bands. Typically have decorations of trophy heads, geometric motifs, and painted female faces.

Size: 5 cm.—20 cm.

G. Recuay

Date: A.D. 100–700.

Characteristics

Slip: Both positive and negative slip-painting is found, generally in colors of black, cream and red.

Shapes: Sculptural, especially ceremonial jars known as ''Paccha'' which have an elaborate outlet to serve a liquid.

Decoration: Usually show groups of religious or mythical personages.

Size: 20 cm.—35 cm. in height.

H. Pashash

Date: A.D. 1–600.

Characteristics

Decoration: Positive decoration in black, red, and orange on a creamy-white background. Some show negative painting.

Shapes: Anthropomorphic vessels, bottles in the form of snakes, bowls with annular base, and large vessels with lids.

Size: The anthropomorphic vessels are up to 20 cm. in height, serpent bottles are around 25 cm. wide x 10 cm. tall, and lidded vessels are more than 30 cm. in height.

Motifs: The decorations are rendered in positive or negative painting in zones that depict profile-face images of zoomorphic figures, serpents, or worms, seen from above and with trapezoidal heads.

I. Cajamarca

Date: A.D. 500–900.

Characteristics

Decoration: Pre-fired slip painting with geometric designs, including stepped triangles, circles, lines, dots, and rows of volutes. They may include stylized birds, felines, camelids, batrachians, and serpents. Spiral figures may include a step-fret motif in the base of the bowls.

Shapes: Pedestal base bowls, tripod bowls, bottles with annular ring base, goblets, spoons with modeled handles, bowls with carinated edges.

J. Moche

Date: A.D. 200–700.

Characteristics

Forms: Stirrup-spout vessels, vessels in the shape of humans, animals, or plants.

Colors: Generally red and white.

Manufacture: Often mold-made.

Size: 15 cm.—25 cm. in height.

Decoration: Wide range of images showing scenes of real life or mythical scenes depicting gods, warriors, and other images.

K. Tiahuanaco

Date: A.D. 200–700.

Characteristics

Decoration: Pre-fired slip painting on a highly polished surface. Background is generally a red-orange, with depictions of human, animal, and geometric images, generally outlined in black and white lines.

Shapes: Plates, cups, jars, beakers, open-backed incense burners on a flat base.

L. Lima

Date: A.D. 200–700.

Characteristics

Decoration: Pre-fired slip painting with interlocking fish and snake designs, geometric motifs, including zig-zags, lines, circles, and dots.

Shapes: Breast-shaped bottles, cups, plates, bowls, and cook pots.

Styles: Related to Playa Grande, Nieveria, and Pachacamac styles.

M. Huari

Date: A.D. 500–1000.

Characteristics

Colors: Orange, cream, violet, white, black, and red.

Motifs: Anthropomorphic, zoomorphic, and plant shapes, both stylized and realistic. In Pachacamac style one finds vessels with a globular body and long, conical neck. In Atarco style, there is slip painting that retains Nazca motifs, especially in the full-body felines shown running.

Slip: Background slip is commonly cream, red, or black.

Styles: Related to Vinaque, Atarco, Pachacamac, Qosqopa, Robles Moqo, Conchopata, and Caquipampa styles.

Size: Most are around 25 cm. tall. Robles Moqo urns may be up to 1 m. in height.

N. Santa

Date: Derived from Huari style, around A.D. 800.

Characteristics

Decoration: Slip painted with figures and designs in black and white on a red background. There are also face-neck jars.

Shapes: Effigy vessels, face-neck jars, double-body vessels.

Sizes: 12 cm.—20 cm. tall.

Shapes: Jars have a globular body and face on the neck. The border may have black and white checkerboard. The body sometimes takes the shape of a stylized llama head. Common are white lines dotted with black. Double-body vessels generally have an anthropomorphic image on the front vessel, and a plain back vessel.

O. Chancay

Date: A.D. 1000–1300.

Characteristics

Treatment: Rubbed surface.

Slip: White or cream with black or dark brown designs.

Molds: Molds are commonly used, especially for the anthropomorphic figures called ''cuchimilcos,'' which represent naked male and female figures with short arms stretched to the sides.

Size: 3 cm.—1 m.

P. Ica-Chincha

Date: Began to be developed in A.D. 1200.

Characteristics

Decoration: Polychrome painting in black and white on red.

Designs: Geometric motifs combined with fish and birds.

Shapes: Bottles with globular bodies and tall necks and with flaring rims. Cups and pots.

Size: 5 cm.—30 cm. high.

Q. Chimú

Date: A.D. 900–1500.

Characteristics

Slip: Monochrome. Usually black or red.

Shapes: Varied shapes. Commonly made in molds. They may represent fish, birds, animals, fruit, people, and architectural forms. One sees globular bodies with a stirrup spout and a small bird or monkey at the base of the neck.

Size: Between 30 cm.—40 cm. in height.

R. Lambayeque

Date: A.D. 700–1100.

Characteristics

Color: Generally black; a few are cream with red decoration.

Shapes: Double spout and bridge vessels on a pedestal base are common. At the base of the spout one sees modeled heads and the bridge also often has modeled heads.

Size: 15 cm.—25 cm. in height.

S. Inca

Date: A.D. 1300–1500.

Characteristics

Decoration: Slip painted in black, red, white, yellow, and orange.

Designs: Geometric designs (rhomboids and triangles) and stylized bees, butterflies, and animals.

Sizes: 1 cm. to 1.5 m. in height.

IV. Pre-Columbian Lithics

A. Chipped Stone: Projectile Points

Paijan Type Points

Size: 8 cm.—18 cm.

Shape: Triangular or heart-shaped.

Color: Generally reddish, orange, or yellow. Can be made of quartz.

Leaf-Shaped Points

Size: 2.5 cm.—15 cm.

Shape: Leaf-shaped. Can be ovaloid or lanceolate.

Color: Generally bright reds, yellows, ochers, quartz crystals, milky whites, greens and blacks.

Paracas Type Points

Size: .3 cm.—25 cm.

Shape: Triangular and lanceolate. Show marks of pressure-flaking. Often they are broken.

Color: Generally black.

Chivateros-Type Blanks

Size: .8 cm.—18 cm.

Shape: Concave indentations on the surface from working.

Color: Greens, reds, and yellows.

B. Polished Stone

Bowl—Vessels of dark colored-stone, sometimes streaked. They have a highly polished, very smooth surface. Some show external carved decoration. Diameters range from 12 cm—55 cm.

Cups—Also vessels of dark-colored stone. Generally have flaring sides. Typical of the Late Horizon. They are highly polished and may have external carved designs or may be in the shape of heads. 18 cm.—28 cm. in height.

Conopas—Small vessels in the form of camelids with a hollow opening on the back. They are black to greenish-black and highly polished. .8 cm.—16 cm. in length.

Idols—Small anthropomorphic figurines, frequently found in Middle Horizon contexts. The almond-shaped eyes with tear-bands are characteristic of the style. Larger examples tend to be of lighter-colored stone while the smaller ones are of dark stones. 12 cm.—28 cm. in height.

Mace head—Varying shapes, most commonly are doughnut-shaped or star-shaped heads, generally associated with Late Intermediate Period and Inca cultures. Commonly black, gray, or white, .8 cm.—20 cm. in diameter.

Metal-working hammer—Elongated shapes, frequently with one flat surface; highly polished. Generally of dark-colored stone, 3 cm.—12 cm.

C. Carved Material

Tenon head—These heads have an anthropomorphic face, prominent lips, and enormous noses. Some, especially those carved of diorite, have snake-like traits. The carved surface is highly polished.

Tablets—Tablets with high-relief design. The upper surface has a patina. They range from 20 cm. to more than 1 m. in length.

V. Pre-Columbian Perishable Remains

A. Wood

Keros (Beakers)—The most common form is a bell-shaped beaker with a flat base, though some have a pedestal like a goblet. Decoration varies with the period:

Pre-Inca: Very rare, they have straight sides and incised or high-relief decoration. Some have inset shells.

Inca: Generally they are incised with geometric designs on the entire exterior.

Colonial Inca: Lacquer painted on the exterior to depict scenes of daily life, nature, and war.

Staffs—Objects of ritual or ceremonial use made of a single piece of wood. They can be distinguished on the basis of two or three of the following traits:

On the lower third, the staff may have a metal decoration.

The body itself is cylindrical and of variable length.

The upper third may have decorations, including inset shell, stone, or metal. Some staffs function as rattles, and in these cases, the rattle is in the upper part.

Carvings—Worked blocks of wood, such as wooden columns (*orcones*) to support the roofs of houses: Chincha, Chimú, and Chancay cultures. Individuals may be depicted standing or seated on a pedestal. In the upper part there is a notch to support the beams, which generally has a face, sometimes painted, at the base of the notch. Their length varies, but they are generally at least a meter or more.

Box—Small lidded boxes, carved of two pieces of wood. Generally the outer surface of box and lid are carved in relief. Chimú-Inca cultures. They measure approximately 20 cm. × 10 cm.

Mirror—Wooden supports for a reflective surface of polished anthracite or pyrite. In some cases the upper part of backs of mirrors are worked in relief or have inset of shell. Moche culture.

Paddle and rudder—Large carvings made of a single piece of wood. Paddles have three parts: the blade and the handle (sometimes decorated), and an upper decorated part, which can have metal plaques or decorative painting. Rudders have two parts: the blade and a handle which may be carved in relief. Chincha culture. Paddles can be 2.30 m. in length and rudders are up to 1.4 m.

Utensils—Bowls and spoons made of wood decorated with zoomorphic or anthropomorphic motifs.

Musical instruments—Trumpets and whistles. Trumpets can be up to 1.2 m. long and are generally decorated on the upper third of the instrument. Whistles vary a great deal from the undecorated to those decorated with human forms. Moche, Huari, and Inca cultures.

B. Bone

Worked bone—Most interesting are Chavín pieces with incised decorations. The bones are generally the long bones of mammals. They vary from 10 cm.–25 cm. in length.

Balance weights—Flat rectangles of bone about 10 cm. in length. Chincha culture.

Musical instruments—Quenas (flutes) and antaras (panpipes) in various shapes. Paracas, Chincha, and Ancon cultures.

C. Gourds

Vessels—Bowls, pots, and holders for lime (for coca chewing). Most interesting are those which are carved or pyroengraved. Produced from the Preceramic onward.

Musical instruments—Ocarinas, small flutes, and whistles. Inca examples may have incised decoration, or decoration with cords and feathers.

D. Cane

Musical instruments—Flutes (especially in Chancay culture), panpipes, and whistles. Flutes are often pyroengraved. Panpipes can have one or two tiers of pipes, which may be lashed together with colored thread. Nazca culture.

E. Straw

Weaving baskets—Basketry over a cane armature, in the shape of a lidded box. Sometimes the basketry is made of several colors of fiber to work out geometric designs. Some still hold their original contents: needles, spindle whorls, spindles, balls of thread, loose thread, etc. Chancay culture.

F. Shell

Musical instruments—Marine shells (*Strombus galeatus, Malea ringens,* etc.), some, especially those from the Formative Period, with incised decoration.

Jewelry—Small beads and charms worked of shell, chiefly *Spondylus princeps,* used mainly in necklaces and pectorals. Moche, Chimú, and Inca cultures.

VI. Pre-Columbian Human Remains

The human remains included in this listing demonstrate modifications of the remains due to ritualistic practices or other intentional treatment of the deceased.

A. Mummies

Peruvian mummies were formed by natural mummification due to the conditions of burial; they have generally not been eviscerated. Usually found in flexed position, with extremities tied together, resulting in a fetal position. In many cases the cords used to tie the body in this position are preserved.

B. Deformed Skulls

Many ancient Peruvian cultures practiced cranial deformation. Such

skulls are easily recognized by their unnatural shapes.

C. Skulls Displaying Trepanation

Trepanation is an operation performed on a skull; the resulting cuts, easily visible on a bare skull, take various forms. Cuts may be less easily distinguished if skin and hair are present:

Principal Techniques

a. Straight cuts: these cuts are pointed at the ends and wider in the center. Openings made this way have a polygonal shape.

b. Cylindrical-conical openings: the openings form a discontinuous line. The resulting opening has a serrated edge.

c. Circular: generally made by a file. The resulting hole is round or elliptical, with beveled or straight edges. This is the most common form of trepanation.

D. Pre-Columbian Trophy Heads

Trophy heads can be identified by the hole made in the forehead to accommodate a carrying cord. When the skin is intact, the eyes and the mouth are held shut with cactus thorns. Finally, the occiput is missing since that is how the brain was removed when the trophy head was prepared.

E. Shrunken Trophy Heads From the Amazon

These heads have had the bones removed and then have been cured to shrink them. They are recognizable because they conserve all the traits of the original skin, including hair and hair follicles. The mouth is sewn shut and generally there are carrying cords attached. There may be an obvious seam to repair the cuts made when the skin was removed from the skull. Finally, the skin is thick (up to 2.5 mm.) and has a dark color. Trophy heads vary between 9.5 cm. and 15.5 cm. in height.

F. Tattoos

Tattooing in pre-Columbian Peru was practiced mainly on the wrists. Most common are geometric designs, including bands of triangles and rhomboids of a bluish color.

G. False Shrunken Heads

False shrunken heads can be recognized because they are made of the skin of a mammal, with some of the fur left where the human hair would be. The skin is first smoked, then pressed into a mold to give it a face-like shape. The eyes, nose, mouth and ears are simple bumps without real holes. Further, the skin is very thin and yellowish in color. Often the ''heads'' have eyebrows and moustaches formed by leaving some of the animal hair, but these features are grotesque because they appear to grow upside down.

VII. Ethnological Objects

A. Objects directly related to the pre-Columbian past, whose pre-Columbian design and function are maintained with some Colonial modifications or additions in technique and/or iconography.

Colonial Indigenous Textiles

Predominant materials: cotton and wool.

Description: These textiles are characterized by the cut of the cloth, with the four borders or selvages finished on the same loom. Clothes are untailored and made from smaller pieces of convenient sizes which were then sewn together. Colonial indigenous textiles of the period are differentiated from pre-Columbian textiles primarily by their decoration: western motifs such as lions, heraldic emblems, and Spanish personages are incorporated into the designs; sometimes fibers distinct from cotton or wool (threads of silver, gold, and silk) are woven into the cloth; and the colors tend to be more vivid because the fabrics were made more recently. Another important characteristic of the clothing is the presence of tocapus or horizontal bands of small squares with anthropomorphic, zoomorphic, phytomorphic and geometric ideographs and designs. Characteristic textiles include:

Panels: Rectangular or square pieces of various sizes.

Anacus: Untailored woman's dress consisting of two or three long horizontal pieces of cloth sewn together that was wound around the body and held in place with ''tupus'' (pins).

Unku/Tunic: Man's shirt with an opening for the head. Sometimes has sleeves.

Lliclla/Shoulder Mantle: Rectangular piece of cloth that women put over their shoulders and held in place by a tupu; standard size: 40″×45″. Generally has a tripartite design based on contrasting panels that alternate bands with decoration and bands with solid colors.

Chumpi/Belt: A woven belt, generally using tapestry technique.

Tupus

Material: Silver, gilded silver, copper, bronze. May have inlays of precious or semi-precious stones.

Description: Tupus were used to hold in place llicllas and ancus. They are pins with a round or elliptical head, with piercing, repoussé, and incised decorations. The difference between pre-Columbian and ethnological tupus can be seen in the introduction of Western designs, for example bi-frontal eagles and heraldic motifs.

Keros

Material: wood.

Description: The most common form is a beakerlike cup with truncated base. After the Conquest, keros started to be decorated with pictorial scenes. The most frequently used techniques include incision, inlaying pigments in wood, and painting. Ideography includes geometric designs, figures under a rainbow (an Inca symbol), ceremonial rituals, scenes of war, and agricultural scenes. Sometimes are in the form of human or zoomorphic heads.

Cochas or Cocchas

Material: ceramic.

Description: Ceremonial vessels with two or more concentric interior compartments which are linked. Often decorated with volutes representing reptiles.

Aribalos

Material: ceramic.

Description: The post-Conquest aribalos have a flat base, often using a glaze for finishing, and the decoration includes Inca and Hispanic motifs.

Pacchas

Material: Stone, ceramic.

Description: One of the characteristics of pacchas is that they have a drain which is used to sprinkle an offering on the ground. They have pictorial or sculpted relief decorations symbolizing the benefits hoped for from the ritual.

B. Objects that were used for religious evangelism among indigenous peoples.

In Colonial paintings and sculptures Western religious themes were reinterpreted by indigenous and mestizo artists who added their own images and other characteristics to create a distinct iconography.

Specific types of objects used for religious evangelism during the Colonial period include the following:

Sculpture

Types of statues include:

A three-dimensional sculpted image: In the Peruvian Colonial period these were made of maguey (a soft wood) and occasionally of cedar or walnut.

Images made of a dough composed of sawdust, glue and plaster: After they are sculpted, figures are dressed with cloth dipped in plaster.

Images to be dressed: These are wooden frames resembling mannequins, with only the head and arms sculpted in wood (cedar or maguey). The images

are dressed with embroidered clothes and jewelry. Frequently other elements were added, such as teeth and false eyelashes, wigs of real hair, eyes of colored glass, and palates made of glass.

Paintings

Catholic priests provided indigenous and mestizo artists with canvases and reproductions of Western works of art, which the artists then ''interpreted'' with their own images and other indigenous characteristics. These may include symbolically associating Christian religious figures with indigenous divinities, or rendering the figures with Andean facial characteristics or in traditional Andean costume. In addition, each church, convent, monastery, and town venerated an effigy of its patron or tutelar saint, some of them native to Peru.

Retables

Retables (*retablos*) are architectonic structures made of stone, wood, or other material that are placed behind the altar and include attached paintings, sculptures or other religious objects.

Liturgical Objects

Objects Used for Mass Ritual: Chalices, cibaries, candelabras, vials for christening or consecrated oil, reliquaries, vessels for wine and water, incense burners, patens, monstrances, pelicans and crucifixes. Made out of silver, gold or gilded silver, often inlaid with pearls or precious stones. Techniques: casting, engraving, piercing, repoussé, filigree.

Fixtures for sculpted images: Areoles, crowns, scepters, halo, halos in the form of rays, and books carried by religious scholars and founders of religious orders.

Ecclesiastical vestments: Some ecclesiastical vestments were commissioned by indigenous individuals or communities for the celebrations of their patron saint and thus are part of the religious legacy of a particular town. In such cases, the vestment has the name of the donor and of the town or church as well as the date.

Votive Offerings: These are representations of miracles or favors received from a particular saint. They can be made of different materials, usually metal or wood, and come in a variety of forms according to the type of favor received, usually representing parts of the human body in reference to the organ healed or agricultural products in recognition of a good harvest or increase in a herd.

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document imposing import restrictions on the above-listed Peruvian cultural property is being made in response to a bilateral agreement entered into in furtherance of the foreign affairs interests of the United States, pursuant to section 553(a)(1) of the Administrative Procedure Act, no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in E.O. 12866.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citation for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

2. In § 12.104g, paragraph (a), the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended by adding ''Peru'' in appropriate alphabetical order under the column headed ''State party'', the description ''Archaeological artifacts and ethnological material from Peru'' under the column headed ''Cultural property'', and the reference ''T.D. 97—50'' under the column headed ''T.D. No.''

3. In § 12.104g, paragraph (b), the list of emergency actions imposing import restrictions on described articles of cultural property of State Parties is amended by removing the entry for ''Peru'' in its entirety.

George J. Weise,

Commissioner of Customs.

Approved: June 5, 1997.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–15428 Filed 6–10–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 113

[Docket No. 75N–0333]

Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its current good manufacturing practices (CGMP's) regulations for canning low-acid foods in hermetically sealed containers, to correct a typographical error. This action is being taken to ensure the accuracy of the regulations.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of March 16, 1979 (44 FR 16209), FDA revised the specific CGMP's for canning low-acid foods to ensure safe manufacturing, processing, and packaging procedures for low-acid canned foods in hermetically sealed containers. The document was published with a typographical error in 21 CFR 113.40(b)(10)(ii). This document corrects that error.

Publication of this document constitutes final action on this change

under the Administrative Procedure Act (5 U.S.C. 553). Notice and public comment are unnecessary because FDA is merely correcting a nonsubstantive error.

List of Subjects in 21 CFR Part 113

Food and Drug Administration, Food packaging, Foods, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 113 is amended as follows:

PART 113—THERMALLY PROCESSED LOW-ACID FOODS PACKAGED IN HERMETICALLY SEALED CONTAINERS

1. The authority citation for 21 CFR part 113 continues to read as follows:

Authority: Secs. 402, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 371, 374); sec. 361 of the Public Health Service Act (42 U.S.C. 264).

§ 113.40 [Amended]

2. Section 113.40 *Equipment and procedures* is amended in paragraph (b)(10)(ii) by removing the word ''warm'' and adding in its place the word ''warn''.

Dated: June 3, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–15166 Filed 6–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–96–056]

RIN 2115–AE47

Drawbridge Operation Regulation; Industrial Seaway Canal, Mississippi

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the double leaf bascule span drawbridge on Lorraine-Cowan Road, across the Industrial Seaway Canal, mile 11.3, near Handsboro, Harrison County, Mississippi. The new operating schedule allows the draw to remain closed to navigation from 6:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays. The new schedule will provide relief for congested vehicular traffic during these periods and still provide for the reasonable needs of navigation.

DATES: This regulation becomes effective on July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: .

Regulatory History

The Coast Guard published a notice of proposed rulemaking on March 3, 1997 (62 FR 9408). No comments were received in response to the proposed rule. No public hearing was requested and none was held.

Discussion of the Rule

Growing industry and commercial retail development in the area over the past few years has increased vehicular traffic on Lorraine-Cowan Road. The traffic has become unreasonably delayed during bridge openings in the mornings and afternoons when local residents are enroute to work and school.

Data submitted by the Harrison County Board of Supervisors showed that, on average, 50,540 vehicles cross and 8 vessels pass each month during the morning from 6:30 a.m. to 8:30 a.m. and 46,000 vehicles cross and 3 vessels pass each month during the afternoon from 4:30 p.m. to 6 p.m. The notice of proposed rulemaking proposed to allow the bridge to remain closed during these time periods. No comments were received on the notice of proposed rulemaking. Few vessels pass the bride during the bridge closure periods and the revised schedule discontinues the one-hour noon closure. Vessel operators will be able to adjust their arrival times at the bridge to avoid the temporary closure periods with very little inconvenience or added expense. The Coast Guard is, therefore, revising the draw opening schedule as proposed.

Regulatory Evaluation

This rule is not a significant regulatory 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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this 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 field and (2) governmental jurisdictions with populations of less than 50,000. A public notice was issued, requesting comments or objections to this proposed rule, specifying how the proposed rule would create a hardship on the objector's method of operation. The public notice was mailed to a list of all business owners and operators which are located on the Industrial Seaway Canal. No letters of objection were received from any of the businesses. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under paragraph 2.B.2.g(5) of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended 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; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.680 is revised to read as follows:

§ 117.680 Industrial Seaway Canal.

The draw of the Lorraine-Cowan Road Bridge across the Industrial Seaway Canal, mile 11.3, need not be opened from 6:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

Dated: May 21, 1997.

Paul J. Prokop,

Captain, U.S. Coast Guard, Commander, Eighth Coast Guard District, Acting.

[FR Doc. 97–15286 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CG11–90–03]

RIN–2115–A47

Drawbridge Operation Regulations; Cerritos Channel, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change of effective date.

SUMMARY: At the request of the Port of Los Angeles, the Coast Guard is temporarily extending the effective date for the temporary change to the regulation for operation of the Henry Ford Avenue Railroad Bridge (Ford Bridge), across Cerritos Channel of Los Angeles/Long Beach, mile 4.8 Long Beach, California to authorize it to remain in the closed to navigation position for an additional period from July 1 to October 2, 1997. The action is necessary both to facilitate reconstruction of the bridge and to avoid disrupting essential rail service during reconstruction. The closure period was most recently established as February 1 to June 30, 1997; however, the project has been delayed, and the closure actually began on May 6, 1997.

EFFECTIVE DATES: This temporary final rule is effective from June 30 through October 2, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of Commander (Pow), Eleventh Coast Guard District, Building 50–6, Coast Guard Island, Alameda, CA 94501–5100 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437–3514. Commander (Pow) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Susan Worden, Bridge Administrator, Eleventh Coast Guard District, (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 28, 1990, the Coast Guard published a notice of proposed rulemaking NPRM in the **Federal Register** (55 FR 35154) concerning closure of the Henry Ford Avenue Railroad Bridge (Ford Bridge), across Cerritos Channel of Los Angeles/Long Beach, mile 4.8 Long Beach, California, for rehabilitation. On July 8, 1996, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) in the **Federal Register** (61 FR 35702) concerning closure of the bridge for replacement. On November 20, 1996 the Coast Guard published a Temporary Final Rule in the **Federal Register** (61 FR 59025) changing the bridge operation regulation, allowing closure during replacement. On May 6, 1997, the Captain of the Port issued a safety zone (COTP Los Angeles-Long Beach, CA; 97–002; 33 CFR § 165.T11–057) prohibiting general navigation in a defined regulated area around the bridge during replacement.

Background and Purpose

At the request of the Port of Los Angeles, the Coast Guard is extending the closure period for the Ford Bridge replacement project because the project is behind schedule. The Ford Bridge, also known as the Badger Avenue Bridge, provides the only rail access to Terminal Island. It crosses a waterway used by oceangoing cargo ships, tugs and barges, tour boats, commercial fishing vessels, and recreational boats. The permanent regulations governing its operation require the bridge to remain fully open except for the passage of trains or for maintenance.

The bridge is over 70 years old and no longer meets California seismic standards or Federal Railroad Administration clearance standards. Interruption or delay of rail and water traffic is likely if the existing bridge were either to malfunction or to be damaged by seismic activity. In 1995, the Coast Guard issued a permit to replace the bridge. Replacement cannot be accomplished without closing the bridge span for a period of five months. Closure of the bridge will require maritime traffic to use an alternate route through the outer harbor. Detours of 5 miles are expected; maximum detours of 10 miles may be experienced. The short term costs attributable to these detours are outweighed by the long-term benefits to be gained by the installation of a new bridge likely to provide uninterrupted rail service and timely, reliable openings for waterborne traffic for many years.

This temporary rule extends the effective date of the previously issued temporary rule authorizing a five month (150 day) closure of the bridge. Closure for 5 months is necessary both to facilitate replacement of the span and reconstruction of the bridge support towers, as well as to avoid disrupting essential rail service during reconstruction. The SNPRM advertised a closure beginning in November 1996. Due to construction delays, the temporary final rule established the change in operating regulation effective February 1, 1997. Additional construction delays were experienced and actual closure of the span did not begin until May 6, 1997, necessitating this extension of the effective period.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard previously calculated the expected economic impact of this rule to be approximately $1 million to waterways users (to detour around the work site) and $2.5 million to the bridge owner (to expedite work). Although the current extension may cause these figures to be elevated, the Coast Guard estimates that they remain below the threshold levels requiring a formal Regulatory Evaluation. (Since the original figures contemplate detours around the work site, the additional economic impact of the safety zone is marginal.) The draft economic analysis published with the NPRM was superseded by a more detailed economic analysis in the Environmental Impact Statement, which is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Small Entities

Under the Regulatory flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this 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 population of less than 50,000. The estimated cost to each recreational mariner affected by this extended regulation and the safety zone is less than $100. The estimated cost per ''small business'' towing company for personnel hours and fuel consumption during detours remains less than $100,000. Because the impact of this proposal is expected to be limited and of relatively short duration, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this rule. The Coast Guard prepared an Environmental Impact Statement for the replacement of this historic bridge. The EIS analyzed the environmental and economic impact of a 5 month bridge closure. The draft Environmental Assessment published with the NPRM has been superseded by the more detailed environmental analysis in the Final EIS, which is available in the docket for inspection of 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 33 CFR Part 117 as follows:

PART 117—[AMENDED]

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 Pub. L. 102–587, 106 Stat. 5039.

§ 117.147 [Amended]

2. Effective June 30, 1997 through October 2, 1997, § 117.147 is amended by suspending paragraph (b) and revising paragraph (c) to read as follows:

§ 117.147 Cerritos Channel

* * * * *

(c) During the period June 30, 1997 through October 2, 1997, the bridge will be undergoing reconstruction and the draw need not open for the passage of vessels.

Dated: May 29, 1997.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 97–15284 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1256

RIN 3095–AA55

Domestic Distribution of United States Information Agency Materials in the Custody of the National Archives

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is issuing regulations which govern the domestic distribution of USIA materials prepared for dissemination abroad that are in the custody of NARA. Public Law 101–246, section 202, requires the Archivist of the United States to issue necessary regulations to ensure that persons seeking release of such USIA materials in the United States have secured and paid for necessary rights and licenses. This rule affects members of the public who wish to use or obtain copies of USIA audiovisual records transferred to NARA.

EFFECTIVE DATE: July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301–713–7360, extension 226.

SUPPLEMENTARY INFORMATION: NARA published a proposed rule for public comment on January 31, 1997 (62 FR 4669). No comments were received. The proposed rule is adopted as final without change.

On February 16, 1990, Public Law 101–246 (104 Stat. 49) amended the United States Information and Educational Exchange Act (22 U.S.C. 1461) to provide for the domestic release of motion pictures, videotapes, sound recordings and other materials 12 years after initial dissemination abroad, or, if not disseminated, 12 years from the preparation of the material. Previously, section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461) had prevented the domestic dissemination by the United States Information Agency of such materials prepared for dissemination abroad in perpetuity unless specifically and individually released by Congressional legislation. The amended law allows release and dissemination once the 12-year threshold has been met and instructs NARA to provide regulations to ensure that any copyrights or underlying rights that may exist in these USIA materials have been protected and releases obtained prior to dissemination in the United States. For the public this amended law provides access and potential use of over 35,000 USIA motion picture films, 3,000 USIA videotape productions, and over 20,000 sound recordings of Voice of America (VOA) radio broadcasts that have been selected as permanently valuable audiovisual records and have been transferred into the custody of the Motion Picture, Sound and Video Branch of NARA. These regulations only apply to USIA records in NARA's custody that were prepared for dissemination abroad.

This final rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities. This rule does not contain any information collections subject to the Paperwork Reduction Act. This rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1256

Archives and records, Copyright, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 1256 of title 36, Chapter XII of the Code of Federal Regulations is amended as follows:

PART 1256—RESTRICTIONS ON THE USE OF RECORDS

1. The authority citation for Part 1256 is revised to read as follows:

Authority: 44 U.S.C. 2101–2118; 22 U.S.C. 1461(b).

2. A new subpart C, consisting of §§ 1256.50 through 1256.60, is added to part 1256 as follows:

Subpart C—Domestic Distribution of United States Information Agency Materials in the National Archives of the United States

Sec.
1256.50 Scope of subpart.
1256.52 Purpose.
1256.54 Definition.
1256.56 Transfer of USIA audiovisual records to NARA.
1256.58 Domestic distribution of USIA audiovisual records transferred to NARA.
1256.60 Fees.

§ 1256.50 Scope of subpart.

This subpart prescribes procedures governing the public availability of audiovisual records and other materials subject to 22 U.S.C. 1461(b) that have been transferred to the National Archives of the United States by the United States Information Agency (USIA).

§ 1256.52 Purpose.

This subpart implements section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461), as amended by section 202 of Public Law 101–246 (104 Stat. 49, Feb. 16, 1990). This subpart prescribes procedures by which the public may inspect and obtain copies of USIA audiovisual records and other materials prepared for dissemination abroad that have been transferred to NARA for preservation and domestic distribution.

§ 1256.54 Definition.

For the purposes of this subpart—*Audiovisual records* mean motion picture films, videotapes, and sound recordings, and other materials regardless of physical form or characteristics that were prepared for dissemination abroad.

§ 1256.56 Transfer of USIA audiovisual records to NARA.

The provisions of 44 U.S.C. 2107 and 36 CFR part 1228 apply to the transfer of USIA audiovisual records to NARA, and to their deposit with the National Archives of the United States. At the time the audiovisual records are transferred to NARA, the Director of USIA, in accordance with § 1228.184(e) of this chapter, will also transfer any production or title files bearing on the ownership of rights in the productions in connection with USIA's official overseas programming.

§ 1256.58 Domestic distribution of USIA audiovisual records transferred to NARA.

No USIA audiovisual records in the National Archives of the United States that were prepared for dissemination abroad will be available for copying until it has been at least 12 years since such materials were first disseminated abroad, or, in the case of materials prepared for foreign dissemination but not disseminated abroad, until it has been at least 12 years since the preparation of the materials.

(a) *Access to USIA audiovisual records that neither have copyright protection nor contain copyright material.* USIA audiovisual records prepared for dissemination abroad that NARA determines neither have copyright protection nor contain copyrighted material are available for examination and copying in accordance with the regulations set forth in parts 1252, 1253, 1254, 1256, and 1258 of this chapter. In determining whether materials have copyright protection or contain copyrighted material, NARA will rely on information contained within or affixed to individual records (e.g., copyright notices); information contained within relevant USIA production, title, or other files that have been transferred to NARA by USIA; information provided by requesters pursuant to paragraph (b)(2) of this section (e.g., evidence from the Copyright Office that copyright has lapsed or expired); and information provided by copyright or license holders.

(b) *Reproduction of USIA audiovisual records that either have copyright protection or contain copyrighted material.*

(1) USIA audiovisual records prepared for dissemination abroad that NARA determines may have copyright protection or may contain copyrighted material will be made available for examination in NARA research facilities in accordance with the regulations set forth in this Title.

(2) Copies of USIA audiovisual records prepared for dissemination abroad that NARA determines may have copyright protection or may contain copyrighted material will be provided to persons seeking the release of such materials in the United States once NARA has

(i) Ensured, in accordance with paragraph (b)(3) of this section, that the persons seeking copies have secured and paid for necessary United States rights and licenses;

(ii) Been provided with evidence from the Copyright Office sufficient to determine that copyright protection in the materials sought, or relevant portions therein, has lapsed or expired; or

(iii) Received a requester's signed certification in accordance with paragraph (b)(4) of this section that the materials sought will be used only for purposes permitted by the Copyright Act of 1976, as amended, including the fair use provisions of 17 U.S.C. 107. No copies of USIA audiovisual records will be provided until the fees authorized under part 1258 of this chapter have been paid to NARA.

(3) If NARA has determined that a USIA audiovisual record prepared for dissemination abroad may have copyright protection or may contain copyrighted material, persons seeking the release of such material in the United States may obtain copies of the material by submitting to NARA written evidence from all copyright and/or license owner(s) that any necessary fees have been paid or waived and any necessary licenses have been secured.

(4) If NARA has determined that a USIA audiovisual record prepared for dissemination abroad may have copyright protection or may contain copyrighted material, persons seeking the release of such material in the United States may obtain copies of the material by submitting to NARA the following certification statement:

> I, (printed name of individual), certify that my use of the copyrighted portions of the (name or title and NARA identifier of work involved) provided to me by the National Archives and Records Administration (NARA), will be limited to private study, scholarship, or research purposes, or for other purposes permitted by the Copyright Act of 1976, as amended. I understand that I am solely responsible for the subsequent use of the copyrighted portions of the work identified above.

(c) In every instance where a copy of an audiovisual record is provided under this subpart, and NARA has determined that the work being reproduced may have copyright protection or may contain copyrighted material, NARA shall provide a warning notice of copyright.

(d) Nothing in this section shall limit NARA's ability to make copies of USIA audiovisual records for preservation, arrangement, repair and rehabilitation, description, exhibition, security, or reference purposes.

§ 1256.60 Fees.

Copies or reproductions of audiovisual records will only be provided under this subpart upon payment of fees in accordance with 44 U.S.C. 2116(c) and 22 U.S.C. 1461(b)(3).

Dated: June 4, 1997.

John W. Carlin,

Archivist of the United States.

[FR Doc. 97–15258 Filed 6–10–97; 8:45 am]

BILLING CODE 7515–01–P

POSTAL SERVICE

39 CFR Part 233

Revision of Regulations Governing the Remission or Mitigation of Forfeitures

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends and adopts regulations that govern the processing of petitions for remission and mitigation of forfeitures by the United States Postal Inspection Service. The amendments are made in an effort to ameliorate the harsh results in individual forfeiture cases and to provide relief to innocent persons whose property is used by others for criminal purposes. The revised regulations parallel those promulgated by the Department of Justice at 62 FR 314–322 on January 3, 1997.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Associate Counsel Maria D. Perez, Postal Inspection Service, (202) 268–5477.

SUPPLEMENTARY INFORMATION: United States Postal Service regulations pertaining to seizures and forfeitures conducted by the Postal Inspection Service were promulgated by the Postal Service in 1987 and are codified at 39 CFR 233.7, Forfeiture authority and procedures.

A grant of a petition for remission of forfeiture provides for the return of forfeited property or the return of an appropriate property interest to individuals who can show that they acted without willful negligence. Mitigation provides for the partial or total relief from forfeiture through the return of some or all of the property and/or the imposition of monetary or other conditions.

This new rule establishes a comprehensive set of procedures, understandable by individuals and their attorneys, that will govern the handling and processing of petitions for remission or mitigation in the overwhelming majority of Postal Service forfeiture cases.

In addition to establishing a consistent petition process, this new rule seeks to: (1) Clarify provisions in existing rules; (2) distinguish between the bases for the remission of forfeiture and the mitigation of forfeiture; (3) address inadequacies that have been detected in current rules due, in part, to the increased use of forfeiture by federal law enforcement agencies; (4) promote consistent and predictable decisions on petitions; and (5) recognize the interests of victims of crime in forfeited moneys and other properties.

This rule amends 39 CFR 233.7(j) so the Postal Inspection Service can transfer forfeited assets to victims of the offense or related offenses underlying particular forfeiture actions. Under the current regulations, standing to seek remission or mitigation is limited to parties having a present legally cognizable interest in the forfeited property (e.g., owners, lienholders), and unless a particular victim has such an interest, forfeited assets cannot be used to restore property to those victimized by the criminal conduct. The amendments permit the agency to transfer certain forfeited assets to victims of certain fraud-type offenses who lack a present ownership interest in particular forfeited assets, but who are victims of the offense underlying the forfeiture or related offense where the applicable statutes allow such a transfer.

The current procedures in § 233.7(j) permit remission and mitigation to victims of crime when the property was forfeited under a statute that specifically provides for the restoration or remission of forfeited property to victims. An example of such a statute is 18 U.S.C. 1963(g), which authorizes the Attorney General to ''restore forfeited property to victims of a violation of this chapter.'' Some statutes, however, do not so provide, and instead adopt the provisions of customs laws relating to remission. For example, 21 U.S.C. 881(d) provides that ''[t]he provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of customs laws; * * * the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred * * * under any of the provisions of this subchapter.'' This new rule does not permit remission or mitigation to victims where the forfeiture occurs under statutes that adopt the provisions of the customs laws without including language specifically authorizing restoration or remission to victims of crimes (e.g., forfeitures pursuant to the civil money laundering statute, 18 U.S.C. 981(a)(1)(A)). In such cases, the remission process is governed solely by the customs laws (specifically, 19 U.S.C. 1613 and 1618), which do not authorize remission to those who lack a legally cognizable interest in the property. However, the amended rules will permit remission to victims should the applicable forfeiture statutes be amended to provide specifically for the restoration or remission of forfeited properties to victims. At the present time, most of the criminal forfeiture statutes as well as 18 U.S.C. 981(a)(1)(C), a civil forfeiture statute, specifically provide for restoration or remission to victims and, therefore, are covered by § 233.7(j), as amended.

List of Subjects in 39 CFR Part 233

Administrative practice and procedure, Crime, Seizures and forfeitures.

Accordingly, Title 39, part 233, of the Code of Federal Regulations is amended as follows:

PART 233—[AMENDED]

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Inspector General Act of 1978, as amended (Pub. L. No. 95–452, as amended), 5 U.S.C. App. 3.

2. Section 233.7 is amended by revising paragraph (j) to read as follows:

§ 233.7 Forfeiture authority and procedures.

* * * * *

(j) *Remission or mitigation of administrative, civil, and criminal forfeitures.*—(1) *Authority, purpose, and scope.*—(i) *Purpose.* This section sets forth the procedures for Postal Inspection Service officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the Postal Service. The purpose of these regulations is to provide a basis for ameliorating the effects of forfeiture through the partial or total remission of forfeiture for individuals who have an interest in the forfeited property but who did not participate in, or have knowledge of, the conduct that resulted in the property being subject to forfeiture and, where required, took all reasonable steps under the circumstances to ensure that such property would not be used, acquired, or disposed of contrary to law. Additionally, these regulations provide for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(ii) *Authority to grant remission and mitigation.* (A) Remission and mitigation functions in administrative forfeitures are performed by the agency seizing the property. Within the Postal Inspection Service, authority to grant remission and mitigation is delegated to the Independent Counsel, Office of the Chief Inspector, Washington, DC.

(B) Remission and mitigation functions in judicial cases are within the jurisdiction of the Criminal Division

of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation has been delegated to the Chief, Asset Forfeiture and Money Laundering Section.

(C) The powers and responsibilities within these regulations may be redelegated to attorneys or managers working under the supervision of the designated officials.

(D) The time periods and internal requirements established in these regulations are designed to guide the orderly administration of the remission and mitigation process and are not intended to create rights or entitlements in favor of individuals seeking remission or mitigation. These regulations will apply to all decisions on petitions for remission or mitigation made on or after July 1, 1997. These regulations will apply to decisions on requests for reconsideration of a denial of a petition under paragraphs (j)(3)(x) and (3)(xi) of this section only if the initial decision on the petition was made under the provisions of this part effective July 1, 1997.

(E) This section governs any petition for remission or mitigation filed with the Chief Postal Inspector and supersedes any Postal Service regulation governing petitions for remission or mitigation to the extent such regulation is inconsistent with this section.

(2) *Definitions.* As used in this part:

(i) The term *administrative forfeiture* means the process by which property may be forfeited by an investigative agency rather than through judicial proceedings.

(ii) The term *appraised value* means the estimated market value of an asset at the time and place of seizure if such or similar property was freely offered for sale between a willing seller and a willing buyer.

(iii) The term *Attorney General* means the Attorney General of the United States or his or her designee.

(iv) The term *beneficial owner* means a person with actual use of, as well as an interest in, the property subject to forfeiture.

(v) The term *general creditor* means one whose claim or debt is not secured by a specific right to obtain satisfaction against the particular property subject to forfeiture.

(vi) The term *judgment creditor* means one who has obtained a judgment against the debtor but has not yet received full satisfaction of the judgment.

(vii) The term *judicial forfeiture* means either a civil or criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

(viii) The term *lienholder* means a creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular property subject to forfeiture. A lien creditor qualifies as a lienholder if the lien:

(A) Was established by operation of law or contract;

(B) Was created as a result of an exchange of money, goods, or services; and

(C) Is perfected against the specific property forfeited for which remission or mitigation is sought (e.g., a real estate mortgage, a mechanic's lien).

(ix) The term *net equity* means the amount of a lienholder's monetary interest in property subject to forfeiture. Net equity shall be computed by determining the amount of unpaid principal and unpaid interest at the time of seizure, and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the decision on the petition. Where a rate of interest is set forth in a security agreement, the rate of interest to be used in this computation will be the annual percentage rate so specified in the security agreement that is the basis of the lienholder's interest. In this computation, however, there shall be no allowances for attorneys' fees, accelerated or enhanced interest charges, amounts set by contract as damages, unearned extended warranty fees, insurance, service contract charges incurred after the date of seizure, allowances for dealer's reserve, or any other similar charges.

(x) The term *owner* means the person in whom primary title is vested or whose interest is manifested by the actual and beneficial use of the property, even though the title is vested in another. A victim of an offense as defined in paragraph (j) (2)(xxi) of this section may also be an owner if he or she has a present legally cognizable ownership interest in the property forfeited. A nominal owner of property will not be treated as its true owner if he or she is not its beneficial owner.

(xi) The term *person* means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

(xii) The term *petition* means a petition for remission or mitigation of forfeiture under these regulations. This definition includes a petition for restoration of the proceeds of sale of forfeited property and a petition for the value of forfeited property placed into official use.

(xiii) The term *petitioner* means the person applying for remission, mitigation, restoration of the proceeds of sale, or for the appraised value of forfeited property under these regulations. A petitioner may be an owner of forfeited property as defined in paragraph (j)(2)(x) of this section; a lienholder as defined in paragraph (j)(2)(viii) of this section; or a victim as defined in paragraph (j)(2)(xxi) of this section subject to the limitations of paragraph (j)(8) of this section.

(xiv) The term *Postal Service Fund* means the United States Postal Fund established under 39 U.S.C. 2003.

(xv) The term *property* means real or personal property of any kind capable of being owned or possessed.

(xvi) The term *record* means a series of arrests for related crimes, unless the arrestee was acquitted or the charges were dismissed for lack of evidence; a conviction for a related crime or completion of sentence within ten years of the acquisition of the property subject to forfeiture; or two convictions for a related crime at any time in the past.

(xvii) The term *related crime* as used in paragraphs (j)(2)(xvi) and (6)(v) of this section means any crime similar in nature to that which gives rise to the seizure of property for forfeiture. For example, where property is seized for a violation of the federal laws dealing with drugs, a related crime would be any offense involving a violation of the federal laws relating to drugs or the laws of any state or political subdivision thereof relating to drugs.

(xviii) The term *related offense* as used in paragraph (j)(8) of this section means:

(A) Any predicate offense charged in a Federal Racketeer Influenced and Corrupt Organizations Act (RICO) count for which forfeiture was ordered; or

(B) An offense committed as part of the same scheme or design, or pursuant to the same conspiracy, as was involved in the offense for which the forfeiture was ordered.

(xix) The term *Ruling Official* means any official to whom decision making authority has been delegated pursuant to paragraph (j)(1)(ii) of this section.

(xx) The term *seizing agency* means the federal agency that seized the property or adopted the seizure of another agency for federal forfeiture.

(xxi) The term *victim* means a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture. A drug user is not considered a victim of a drug trafficking offense under this definition. A victim does not include one who acquires a right to sue the perpetrator of the criminal offense for any loss by assignment, subrogation, inheritance, or otherwise from the actual victim, unless that person has acquired an actual

ownership interest in the forfeited property.

(xxii) The term *violator* means the person whose use or acquisition of the property in violation of the law subjected such property to seizure for forfeiture.

(3) *Petitions in administrative forfeiture cases.*—(i) *Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within thirty (30) days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until the forfeited property is placed into official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore the proceeds from the sale of forfeited property. A notice of seizure shall include the title of the seizing agency, the Ruling Official, the mailing and street address of the official to whom petitions should be sent, and an asset identifier number.

(ii) *Persons who may file.* A petition for remission or mitigation must be filed by a petitioner as defined in paragraph (j)(2)(xiii) of this section or as prescribed in paragraphs (j)(9) (vii) and (viii) of this section.

(iii) *Contents of petition.* (A) All petitions must include the following information in clear and concise terms:

(*1*) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(*2*) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(*3*) A complete description of the property including make, model, and serial numbers, if any; and

(*4*) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, deeds, mortgages, or other documentary evidence.

(B) Any factual recitation or documentation of any type in a petition must be supported by a sworn affidavit.

(iv) *Releases.* In addition to the contents of the petition for remission or mitigation set forth in paragraph (j)(3)(iii) of this section, upon request, the petitioner shall also furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing interest in such property.

(v) *Filing petition with agency.* (A) A petition for remission or mitigation of an administrative forfeiture by the Postal Inspection Service shall be sent to the Chief Postal Inspector, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–2100.

(B) The petition shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set out in paragraph (j)(9)(vii) of this section.

(vi) *Agency investigation.* Upon receipt of a petition, the Postal Inspection Service shall investigate the merits of the petition and prepare a written report containing the results of that investigation. This report shall be submitted to the Ruling Official for review and consideration.

(vii) *Ruling.* Upon receipt of the petition and the agency report, the Ruling Official shall review the petition and the report, and shall rule on the merits of the petition. No hearing shall be held.

(viii) *Petitions granted.* If the Ruling Official grants a remission or mitigation of the forfeiture, a copy of the decision shall be sent by certified mail to the petitioner, or, if represented by an attorney, to the petitioner's attorney. A copy of the decision shall also be sent to the U.S. Marshals Service or other property custodian. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein.

(ix) *Petitions denied.* If the Ruling Official denies a petition, a copy of the decision shall be sent by certified mail to the petitioner, or, if represented by an attorney, to the petitioner's attorney of record. A copy of the decision shall also be sent to the U.S. Marshals Service or other property custodian. The written decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Ruling Official in accordance with paragraph (j)(3)(x) of this section.

(x) *Request for reconsideration.* (A) A request for reconsideration of the denial of the petition shall be considered if:

(*1*) It is postmarked or received by the office of the Ruling Official within ten (10) days from the receipt of the notice of the denial of the petition by the petitioner; and

(*2*) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.

(B) In no event shall a request for reconsideration be decided by the same Ruling Official who ruled on the original petition.

(C) Only one request for reconsideration of a denial of a petition shall be considered.

(xi) *Restoration of proceeds from sale.* (A) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(*1*) Did not know of the seizure prior to the entry of a declaration of forfeiture; and

(*2*) Could not reasonably have known of the seizure prior to the entry of a declaration of forfeiture.

(B) Such a petition shall be submitted pursuant to paragraphs (j)(3)(ii) through (v) of this section within ninety (90) days from the date the property is sold or otherwise disposed of.

(4) *Petitions in judicial forfeiture cases.*—(i) *Procedure for filing petition.* If the forfeiture proceedings are judicial, a petition for remission or mitigation of a judicial forfeiture shall be addressed to the Attorney General; shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746; and shall be submitted to the United States Attorney for the district in which the judicial forfeiture proceedings are brought. A petitioner also shall submit a copy of the petition to the Chief Postal Inspector if the Postal Inspection Service was the seizing agency.

(ii) *Ruling.* Department of Justice regulations on petitions for remission or mitigation in judicial forfeiture cases are stated in 29 CFR 9.4.

(5) *Criteria governing administrative remission and mitigation.*—(i) *Remission.* (A) The Ruling Official shall not grant remission of a forfeiture unless the petitioner establishes that:

(*1*) The petitioner has a valid, good faith and legally cognizable interest in the seized property as owner or lienholder as defined in these regulations; and

(*2*) The petitioner is innocent within the meaning of the innocent owner provisions of the applicable civil forfeiture statute, is a bona fide purchaser for value without cause to believe that the property was subject to

forfeiture at the time of the purchase, or is one who held a legally cognizable interest in the seized property at the time of the violation underlying the forfeiture superior to that of the defendant within the meaning of the applicable criminal forfeiture statute, and is thereby entitled to recover his or her interest in the forfeited property by statute. (If the applicable civil forfeiture statute contains no innocent owner defense, the innocent owner provisions applicable to 21 U.S.C. 881(a)(4) shall apply.) Unless otherwise provided by statute, in the case of petitioners who acquired their interest in the property after the time of the violation underlying the forfeiture, the question of whether the petitioner had knowledge of the violation shall be determined as of the point in time when the interest in the property was acquired.

(B) The knowledge and responsibilities of petitioner's representative, agent, or employee in paragraph (j)(5)(i)(A)(*2*) of this section are imputed to the petitioner where the representative, agent, or employee was acting in the course of his or her employment and in furtherance of the petitioner's business.

(C) The petitioner has the burden of establishing the basis for granting a petition for remission or mitigation of forfeited property, a restoration of proceeds of sale or appraised value of forfeited property, or a reconsideration of a denial of such a petition. Failure to provide information or documents and to submit to interviews, as requested, may result in a denial of the petition.

(D) The Ruling Official shall presume a valid forfeiture and shall not consider whether the evidence is sufficient to support the forfeiture.

(E) Willful, materially false statements or information, made or furnished by the petitioner in support of a petition for remission or mitigation of forfeited property, the restoration of proceeds or appraised value of forfeited property, or the reconsideration of a denial of any such petition, shall be grounds for denial of such petition and possible prosecution for the filing of false statements.

(ii) *Mitigation.* (A) The Ruling Official may grant mitigation to a party not involved in the commission of the offense underlying forfeiture:

(*1*) Where the petitioner has not met the minimum conditions for remission, but the Ruling Official finds that some relief should be granted to avoid extreme hardship and that return of the property combined with imposition of monetary and/or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice and will not diminish the deterrent effect of the law. Extenuating circumstances justifying such a finding include those circumstances that reduce the responsibility of the petitioner for knowledge of the illegal activity, knowledge of the criminal record of a user of the property, or failure to take reasonable steps to prevent the illegal use or acquisition by another for some reason, such as a reasonable fear of reprisal; or

(*2*) Where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the Ruling Official, complete relief is not warranted.

(B) The Ruling Official may in his or her discretion grant mitigation to a party involved in the commission of the offense underlying the forfeiture where certain mitigating factors exist, including, but not limited to: The lack of a prior record or evidence of similar criminal conduct; if the violation does not include drug distribution, manufacturing, or importation, the fact that the violator has taken steps, such as drug treatment, to prevent further criminal conduct; the fact that the violation was minimal and was not part of a larger criminal scheme; the fact that the violator has cooperated with federal, state, or local investigations relating to the criminal conduct underlying the forfeiture; or the fact that complete forfeiture of an asset is not necessary to achieve the legitimate purposes of forfeiture.

(C) Mitigation may take the form of a monetary condition or the imposition of other conditions relating to the continued use of the property, and the return of the property, in addition to the imposition of any other costs that would be chargeable as a condition to remission. This monetary condition is considered as an item of cost payable by the petitioner, and shall be deposited into the Postal Service Fund as an amount realized from forfeiture in accordance with the applicable statute. If the petitioner fails to accept the Ruling Official's mitigation decision or any of its conditions, or fails to pay the monetary amount within twenty (20) days of the receipt of the decision, the property shall be sold, and the monetary amount imposed and other costs chargeable as a condition to mitigation shall be subtracted from the proceeds of the sale before transmitting the remainder to the petitioner.

(6) *Special rules for specific petitioners.* (i) *General creditors.* A general creditor may not be granted remission or mitigation of forfeiture unless he or she otherwise qualifies as a petitioner under these regulations.

(ii) *Rival claimants.* If the beneficial owner of the forfeited property and the owner of a security interest in the same property each file a petition, and if both petitions are found to be meritorious, the claim of the beneficial owner shall take precedence.

(iii) *Voluntary bailments.* A petitioner who allows another to use his or her property without cost, and who is not in the business of lending money secured by property or of leasing or renting property for profit, shall be granted remission or mitigation of forfeiture in accordance with the provisions of paragraph (j)(5) of this section.

(iv) *Lessors.* A person engaged in the business of leasing or renting real or personal property on a long-term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless the lessor can demonstrate compliance with all the requirements of paragraph (j)(5) of this section.

(v) *Straw owners.* A petition by any person who has acquired a property interest recognizable under these regulations and who knew or had reason to believe that the interest was conveyed by the previous owner for the purpose of circumventing seizure, forfeiture, or these regulations, shall be denied. A petition by a person who purchases or owns property for another who has a record for related crimes as defined in paragraph (j)(2)(xvii) of this section, or a petition by a lienholder who knows or has reason to believe that the purchaser or owner of record is not the real purchaser or owner, shall be denied unless both the purchaser of record and the real purchaser or owner meet the requirements of paragraph (j)(5) of this section.

(vi) *Judgment creditors.* (A) A judgment creditor will be recognized as a lienholder if:

(*1*) The judgment was duly recorded before the seizure of the property for forfeiture;

(*2*) Under applicable state or other local law, the judgment constitutes a valid lien on the property that attached to it before the seizure of the property for forfeiture; and

(*3*) The petitioner had no knowledge of the commission of any act or acts giving rise to the forfeiture at the time the judgment became a lien on the forfeited property.

(B) A judgment creditor will not be recognized as a lienholder if the property in question is not property of which the judgment debtor is entitled to claim ownership under applicable state or other local law (e.g., stolen property).

A judgment creditor is entitled under these regulations to no more than the amount of the judgment, exclusive of any interest, costs, or other fees including attorney's fees associated with the action that led to the judgment or its collection.

(C) A judgment creditor's lien must be registered in the district where the property is located if the judgment was obtained outside the district.

(7) *Terms and conditions of remission and mitigation.*—(i) *Owners.* (A) An owner's interest in property that has been forfeited is represented by the property itself or by a monetary interest equivalent to that interest at the time of seizure. Whether the property or a monetary equivalent will be remitted to an owner shall be determined at the discretion of the Ruling Official.

(B) If a civil judicial forfeiture action against the property is pending, release of the property must await an appropriate court order.

(C) Where the government sells or disposes of the property prior to the grant of the remission, the owner shall receive the proceeds of that sale, less any costs incurred by the government in the sale. The Ruling Official, at his or her discretion, may waive the deduction of costs and expenses incident to the forfeiture.

(D) Where the owner does not comply with the conditions imposed upon release of the property by the Ruling Official, the property shall be sold. Following the sale, the proceeds shall be used to pay all costs of the forfeiture and disposition of the property, in addition to any monetary conditions imposed. The remaining balance shall be paid to the owner.

(ii) *Lienholders.* (A) When the forfeited property is to be retained for official use or transferred to a state or local law enforcement agency or foreign government pursuant to law, and remission or mitigation has been granted to a lienholder, the recipient of the property shall assure that:

(*1*) In the case of remission, the lien is satisfied as determined through the petition process; or

(*2*) In the case of mitigation, an amount equal to the net equity, less any monetary conditions imposed, is paid to the lienholder prior to the release of the property to the recipient agency or foreign government.

(B) When the forfeited property is not retained for official use or transferred to another agency or foreign country pursuant to law, the lienholder shall be notified by the Ruling Official of the right to select either of the following alternatives:

(*1*) *Return of property.* The lienholder may obtain possession of the property after paying the United States, through the Ruling Official, the costs and expenses incident to the forfeiture, the amount, if any, by which the appraised value of the property exceeds the lienholder's net equity in the property, and any amount specified in the Ruling Official's decision as a condition to remit the property. The Ruling Official, at his or her discretion, may waive costs and expenses incident to the forfeiture. The Ruling Official shall forward a copy of the decision, a memorandum of disposition, and the original releases to the U.S. Marshals Service or other property custodian who shall thereafter release the property to the lienholder; or

(*2*) *Sale of Property and Payment to Lienholder*—Subject to the provisions of paragraph (j)(9)(i) of this section, upon sale of the property, the lienholder may receive the payment of a monetary amount up to the sum of the lienholder's net equity, less the expenses and costs incident to the forfeiture and sale of the property, and any other monetary conditions imposed. The Ruling Official, at his or her discretion, may waive costs and expenses incident to the forfeiture.

(iii) If the lienholder does not notify the Ruling Official of the selection of one of the two options set forth above in paragraph (j)(7)(ii)(B) of this section within twenty (20) days of the receipt of such notification, the Ruling Official shall direct the U.S. Marshal or other property custodian to sell the property and pay the lienholder an amount up to the net equity, less the costs and expenses incurred incident to the forfeiture and sale, and any monetary conditions imposed. In the event a lienholder subsequently receives a payment of any kind on the debt owed for which he or she has already received payment as a result of the granting of remission or mitigation, the lienholder shall reimburse the Postal Service Fund to the extent of the payment received.

(iv) Where the lienholder does not comply with the conditions imposed upon the release of the property, the property shall be sold after forfeiture. From the proceeds of the sale, all costs incident to the forfeiture and sale shall first be deducted, and the balance up to the net equity, less any monetary conditions, shall be paid to the lienholder.

(8) *Provisions applicable to victims.* The provisions of this section apply to victims of an offense underlying the forfeiture of property, or of a related offense, who do not have a present ownership interest in the forfeited property (or, in the case of multiple victims of an offense, who do not have a present ownership interest in the forfeited property that is clearly superior to that of other petitioner victims). The provisions of this section apply only with respect to property forfeited pursuant to statutes that explicitly authorize restoration or remission of forfeited property to victims. Victims who have a superior present legally cognizable ownership interest in forfeited property may file petitions as other owners, subject to the regulations set forth in paragraph (j)(7)(i) of this section. The claims of such owner victims, like those of any other owners, shall have priority over the claims of any non-owner victims whose claims are recognized pursuant to this section.

(i) *Qualifications to file.* A victim, as defined in paragraph (j)(2)(xxi) of this section, of an offense that was the underlying basis for the criminal, civil, or administrative forfeiture of specific property, or a victim of a related offense, may be granted remission of the forfeiture of that property, if in addition to complying with the other applicable provisions of this section, the victim satisfactorily demonstrates that:

(A) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that resulted in the forfeiture, or by a related offense, and that the loss is supported by documentary evidence including invoices and receipts;

(B) The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts which were committed in the course of a criminal offense;

(C) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture;

(D) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and

(E) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.

(ii) *Pecuniary loss.* The amount of the pecuniary loss suffered by a victim for which remission may be granted is limited to the fair market value of the property of which the petitioner was deprived as of the date of the occurrence of the loss. No allowance shall be made for interest foregone or for collateral expenses incurred to recover lost property or to seek other recompense.

(iii) *Torts.* A tort associated with illegal activity that formed the basis for

the forfeiture shall not be a basis for remission, unless it constitutes the illegal activity itself, nor shall remission be granted for physical injuries to a petitioner or for damage to a petitioner's property.

(iv) *Denial of petition*. In the exercise of his or her discretion, the Ruling Official may decline to grant remission where:

(A) There is substantial difficulty in calculating the pecuniary loss incurred by the victim or victims;

(B) The amount of the remission, if granted, would be small compared with the amount of expenses incurred by the government in determining whether to grant remission; or

(C) The total number of victims is large and the monetary amount of the remission so small as to make its granting impractical.

(v) *Pro rata basis*. In granting remission to multiple victims pursuant to this section, the Ruling Official should generally grant remission on a pro rata basis to recognized victims when petitions cannot be granted in full due to the limited value of the forfeited property. However, the Ruling Official may consider, among others, the following factors in establishing appropriate priorities in individual cases:

(A) The specificity and reliability of the evidence establishing a loss;

(B) The fact that a particular victim is suffering an extreme financial hardship;

(C) The fact that a particular victim has cooperated with the government in the investigation related to the forfeiture or to a related prosecution or civil action; and

(D) In the case of petitions filed by multiple victims of related offenses, the fact that a particular victim is a victim of the offense underlying the forfeiture.

(vi) *Reimbursement*. Any petitioner granted remission pursuant to this section shall reimburse the Postal Service Fund for the amount received to the extent the individual later receives compensation for the loss of the property from any other source. The petitioner shall surrender the reimbursement upon payment from any secondary source.

(vii) *Claims of financial institution regulatory agencies*. In cases involving property forfeitable under 18 U.S.C. 981(a)(1)(C) or (a)(1)(D), the Ruling Official may decline to grant a petition filed by a petitioner in whole or in part due to the lack of sufficient forfeitable funds to satisfy both the petition and claims of the financial institution regulatory agencies pursuant to 18 U.S.C. 981 (e)(3) or (7). Generally, claims of financial regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7) shall take priority over claims of victims.

(9) *Miscellaneous Provisions*—(i) *Priority of payment*. Except where otherwise provided in this section, costs incurred by the Postal Inspection Service and other agencies participating in the forfeiture that were incident to the forfeiture, sale, or other disposition of the property shall be deducted from the amount available for remission or mitigation. Such costs include, but are not limited to, court costs, storage costs, brokerage and other sales-related costs, the amount of any liens and associated costs paid by the government on the property, costs incurred in paying the ordinary and necessary expenses of a business seized for forfeiture, awards for information as authorized by statute, expenses of trustees or other assistants pursuant to paragraph (j)(9)(iii) of this section, investigative or prosecutive costs specially incurred incident to the particular forfeiture, and costs incurred incident to the processing of the petition(s) for remission or mitigation. The remaining balance shall be available for remission or mitigation. The Ruling Official shall direct the distribution of the remaining balance in the following order of priority, except that he or she may exercise discretion in determining the priority between petitioners belonging to classes described in paragraphs (j)(9)(iii) and (9)(iv) of this section in exceptional circumstances:

(A) Owners;

(B) Lienholders;

(C) Federal financial institution regulatory agencies (pursuant to paragraph (j)(9)(vi) of this section, not constituting owners or lienholders); and

(D) Victims not constituting owners or lienholders (pursuant to paragraph (j)(8) of this section).

(ii) *Sale or disposition of property prior to ruling.* If forfeited property has been sold or otherwise disposed of prior to a ruling, the Ruling Official may grant relief in the form of a monetary amount. The amount realized by the sale of the property is presumed to be the value of the property. Monetary relief shall not be greater than the appraised value of the property at the time of seizure and shall not exceed the amount realized from the sale or other disposition. The proceeds of the sale shall be distributed as follows:

(A) Payment of the government's expenses incurred incident to the forfeiture and sale, including court costs and storage charges, if any;

(B) Payment to the petitioner of an amount up to his or her interest in the property;

(C) Payment to the Postal Service Fund of all other costs and expenses incident to the forfeiture;

(D) In the case of victims, payment of any amount up to the amount of his or her loss; and

(E) Payment of the balance remaining, if any, to the Postal Service Fund.

(iii) *Trustees and other assistants.* In the exercise of his or her discretion, the Ruling Official may use the services of a trustee, other government official, or appointed contractors to notify potential petitioners, process petitions, and make recommendations to the Ruling Official on the distribution of property to petitioners. The expense for such assistance shall be paid out of the forfeited funds.

(iv) *Other agencies of the United States.* Where another agency of the United States is entitled to remission or mitigation of forfeited assets because of an interest that is recognizable under these regulations, or is eligible for such transfer pursuant to 18 U.S.C. 981(e)(6), such agency shall request the transfer in writing, in addition to complying with the provisions of paragraphs (j)(3) through (5) of this section. The decision to make such transfer shall be made in writing by the Ruling Official.

(v) *Financial institution regulatory agencies.* A Ruling Official may direct the transfer of property under 18 U.S.C. 981(e) to certain federal financial institution regulatory agencies or an entity acting in their behalf, upon receipt of a written request, in lieu of ruling on a petition for remission or mitigation.

(vi) *Transfers to foreign governments.* A Ruling Official may decline to grant remission to any petitioner other than an owner or lienholder so that forfeited assets may be transferred to a foreign government pursuant to 18 U.S.C. 981(i)(1), 19 U.S.C. 1616a(c)(2), or 21 U.S.C. 881(e)(1)(E).

(vii) *Filing by attorneys.* (A) A petition for remission or mitigation may be filed by a petitioner or by his or her attorney or legal guardian. If an attorney files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

(*1*) The attorney has the authority to represent the petitioner in this proceeding;

(*2*) The petitioner has fully reviewed the petition; and

(*3*) The petition is truthful and accurate in every respect.

(B) Verbal notification of representation is not acceptable. Responses and notification of rulings shall not be sent to an attorney claiming to represent a petitioner unless a written

notice of representation is filed. No extensions of time shall be granted due to delays in submission of the notice of representation.

(viii) *Consolidated petitions.* At the discretion of the Ruling Official in individual cases, a petition may be filed by one petitioner on behalf of other petitioners, provided the petitions are based on similar underlying facts, and the petitioner who files the petition has written authority to do so on behalf of the other petitioners. This authority must be either expressed in documents giving the petitioner the authority to file petitions for remission, or reasonably implied from documents giving the petitioner express authority to file claims or lawsuits related to the course of conduct in question on behalf of these other petitioners. An insurer or an administrator of an employee benefit plan, for example, which itself has standing to file a petition as a ''victim'' within the meaning of paragraph (j)(2)(xxi) of this section, may also file a petition on behalf of all its insured or plan beneficiaries for any claims they may have based on co-payments made to the perpetrator of the offense underlying the forfeiture or the perpetrator of a ''related offense'' within the meaning of paragraph (j)(2)(xviii) of this section, if the authority to file claims or lawsuits is contained in the document or documents establishing the plan. Where such a petition is filed, any amounts granted as a remission must be transferred to the other petitioners, not the party filing the petition; although, in his or her discretion, the Ruling Official may use the actual petitioner as an intermediary for transferring the amounts authorized as a remission to the other petitioners.

Stanley F. Mires,

Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No. PA–4057a; FRL–5835–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_X RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires volatile organic compounds (VOC) and nitrogen oxides (NO_X) reasonably available control technology (RACT) on five major sources located in Pennsylvania. The intended effect of this action is to approve source-specific plan approvals and operating permits that establish the above-mentioned RACT requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: This action will become effective August 11, 1997 unless notice is received on or before July 11, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David Campbell, Air, Radiation, and Toxics Division, Mailcode 3AT22, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 566–2191, at the EPA Region III office or via e-mail at knapp.ruth@epamail. epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On December 8, 1995, February 20, 1996, March 21, 1996, April 16, 1996, and September 13, 1996, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). Each source subject to this rulemaking will be identified and discussed below. Any plan approvals and operating permits submitted coincidentally with those being approved in this notice, and not identified below, will be addressed in a separate rulemaking action.

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_X sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in sections 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The Pennsylvania submittals that are the subject of this notice are meant to satisfy the RACT requirements for five sources in Pennsylvania.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals and operating permits can be found in the docket and accompanying technical support document (TSD) and will not be reiterated in this notice. Briefly, EPA is approving a revision to the Pennsylvania SIP pertaining to the determination of RACT for five major sources. Several of the plan approvals and operating permits contain conditions irrelevant to the determination of VOC or NO_X RACT. Consequently, these provisions are not being included in this approval for source-specific VOC or NO_X RACT.

RACT Determinations

The following table identifies the individual plan approvals and operating permits EPA is approving. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support document, which is available upon request from the EPA Region III office listed in the **ADDRESSES** section of this notice.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan approval (PA #), operating permit (OP #), compliance permit (CP #),	Source type	''Major source'' pollutant
CNG Transmission Corp., Ellisburg ..	Potter	PA 53–0004A, OP 53–0004, CP 53–0004A.	Natural Gas Transmission	NO_X, VOC.
CNG Transmission Corp., Greenlick	Potter	PA 53–0003A, OP 53–0003, CP 53–0003A.	Natural Gas Transmission	NO_X, VOC.
CNG Transmission Corp., Crayne	Greene	OP 30–000–089	Natural Gas Transmission	NO_X.
CNG Transmission Corp., State Line Station.	Potter	OP 53–0008	Natural Gas Transmission	NO_X, VOC.
CNG Transmission Corp., Big Run ...	Jefferson	PA 33–147	Natural Gas Transmission	NO_X.

Several of the plan approvals/operating permits contain a provision that allows for future changes to the emission limitations based on Continuous Emissions Monitoring (CEM) or other monitoring data. Since EPA cannot approve emission limitations that are not currently before it, any changes to the emission limitations as submitted to EPA on December 8, 1995, February 20, 1996, March 21, 1996, April 16, 1996, and September 13, 1996, must be resubmitted to and approved by EPA in order for these changes to be incorporated into the Pennsylvania SIP. Consequently, the source-specific RACT emission limitations that are being approved into the Pennsylvania SIP are those that were submitted on the above-mentioned dates and are the subject of this rulemaking notice. These emission limitations will remain unless and until they are replaced pursuant to 40 CFR part 51 and approved by the U.S. EPA. In addition, several of the plan approvals and operating permits contain a general provision that would allow compliance date extensions at the request of the source and approval by Pennsylvania without EPA approval. While EPA does not automatically dismiss the possibility of compliance date extensions, EPA cannot pre-approve compliance date extensions through a general provision such as that which occurs in those plan approvals and operating permits.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 11, 1997 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 11, 1997. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn in the manner described here.

Final Action

EPA is approving three plan approvals, four operating permits and two compliance permits as RACT for five individual sources. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

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

advising any small governments that may be significantly or uniquely impacted by the rule.

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

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

E. 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 11, 1997. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve VOC and NO_X RACT determinations for a number of individual sources in Pennsylvania as a revision to the Commonwealth's SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 21, 1997.

W. T. Wisniewski,

Acting, Regional Administrator, Region III.

40 CFR part 52, subpart NN of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(121) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(121) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NO_X RACT, submitted on December 8, 1995, February 20, 1996, March 21, 1996, April 16, 1996, and September 13, 1996 by the Pennsylvania Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection):

(i) Incorporation by reference.

(A) Five letters submitted by the Pennsylvania Department of Environmental Resources (now, the Pennsylvania Department of Environmental Protection) transmitting source-specific VOC and/or NO_X RACT determinations in the form of plan approvals or operating permits on the following dates: December 8, 1995, February 20, 1996, March 21, 1996, April 16, 1996, and September 13, 1996.

(B) Plan approvals (PA), Operating permits (OP), Compliance permits (CP):

(*1*) CNG Transmission Corporation—Ellisburg, Potter County, OP–53–0004, effective February 29, 1996, except for the expiration date of the operating permit; PA–53–0004A effective February 29, 1996, except for the expiration date of the plan approval; and CP–53–0004A except for the expiration date, except for item #6 regarding future compliance extensions.

(*2*) CNG Transmission Corporation—Greenlick Compressor Station, Potter County, PA–53–0003A, effective December 18, 1995, except for the plan approval expiration date, except for the portion of item #3 regarding carbon monoxide (CO) emissions increases, except the portion of item #4 regarding CO emission limitations; OP–53–0003, effective December 18, 1995 except for the operating permit expiration date; and CP–53–0003A, except for the expiration date of the compliance permit, except for item #6 regarding future compliance extensions.

(*3*) CNG Transmission Corporation—Crayne Station, Greene County, OP 30–000–089, effective December 22, 1995 except for the expiration date of the operating permit, except for the portion of item #4 regarding CO emission limitations, except for item #9 regarding emission limitation revisions.

(*4*) CNG Transmission Corporation—State Line Station, Potter County, OP–53–0008, effective January 10, 1996 except for the expiration date of the operating permit, except for the portions of item #22 regarding CO emission limitations.

(*5*) CNG Transmission Corporation—Big Run, Jefferson County, PA 33–147, effective June 27, 1995, except for item #9 regarding emission limitation revisions.

(ii) Additional Material.

(A) Remainder of the Commonwealth of Pennsylvania's December 8, 1995, February 20, 1996, March 21, 1996, April 16, 1996, and September 13, 1996 submittals pertaining to the RACT determinations for the five sources listed in (i) above.

[FR Doc. 97–15095 Filed 6–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 68–0011; FRL–5835–8]

Approval and Promulgation of State Implementation Plans; Arizona—Maricopa County Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Arizona on April 29, 1997, establishing a summertime gasoline Reid Vapor Pressure (RVP) limit of 7.0 pounds per square inch (psi) for gasoline distributed in the Maricopa County (Phoenix) ozone nonattainment area. Arizona has lowered the summertime RVP limit for this area to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA). Arizona's fuel requirement is not preempted by federal fuels requirements because EPA is finding that the control measure is necessary for the Maricopa area to attain the national ambient air quality standards (NAAQS) for ozone and is approving the measure into the Arizona SIP.

DATES: This direct final rule is effective on August 11, 1997, unless EPA receives adverse or critical comments by July 11,

1997. If such comments are received, EPA will withdraw this direct final rule and publish a timely notice in the **Federal Register**.

ADDRESSES: Written comments should be sent to the Region IX contact listed below. Copies of the SIP revision are available in the docket (#AZ–RVP–97) for this rulemaking, which is open for public inspection at the addresses below. A copy of this notice is also available on EPA, Region IX's website at http://www.epa.gov/region09.

Air Planning Office (AIR–2), Air Division, Region IX, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105

Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix Arizona 85012

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, Air Planning Office, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1225.

SUPPLEMENTARY INFORMATION:

I. Reid Vapor Pressure

Reid Vapor Pressure (RVP) is a measure of a gasoline's volatility and is a measurement of the rate at which gasoline evaporates and emits VOC; the lower the RVP, the lower the rate of evaporation. The RVP of gasoline can be lowered by reducing the amount of its volatile components, such as butane. Lowering RVP in the summer months can offset the effect of summer temperature upon the volatility of gasoline, which, in turn, lowers emissions of VOC. However, because VOC is a necessary component in the production of ground level ozone in hot summer months, reduction of RVP will help ozone nonattainment areas like the Maricopa (Phoenix), Arizona, area attain the NAAQS for ozone [1] and thereby produce benefits for human health and the environment.

The primary emission benefits from low RVP gasoline come from reductions in evaporative emissions; exhaust emission reductions are very small or nonexistent. Because oxides of nitrogen (NO_X) are a product of combustion, they will not be found in evaporative emissions, and low RVP gasoline will have little or no effect on NO_X.

[1] The Maricopa area is classified as a ''moderate'' ozone nonattainment area under the CAA. 40 CFR 81.303.

II. State Submittal

Section 13 of Arizona House Bill (H.B.) 2001 (1993 Special Session), originally codified in Arizona Revised Statutes (ARS) at section 41–2083(E) [2], was passed by the Arizona legislature on November 12, 1993. This provision limits the maximum summer vapor pressure (or Reid vapor pressure) of gasoline fuel sold in the Maricopa area to 7.0 psi beginning May 31, 1995 through September 30, 1995, and will continue to apply from May 31 through September 30 of each year thereafter. Gasoline distributed in the Maricopa area by refineries, importers, carriers, retail stations and other end users who sell or dispense gasoline must meet the 7.0 psi limit during those periods. The State of Arizona submitted section 13 of H.B. 2001 to EPA as a SIP revision on April 29, 1997.

III. Clean Air Act Requirements

In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

For SIP revisions addressing fuel measures, an additional statutory requirement applies. CAA section 211(c)(4)(A) prohibits state regulation of a fuel characteristic or component for which EPA has adopted a control or prohibition, unless the state control is identical to the federal control. Section 211(c)(4)(C) provides an exception to this preemption if the measure is approved in a SIP. EPA can approve such a SIP provision if it finds that the control or prohibition is necessary to achieve a NAAQS. EPA can make this finding if no other measures exist that would bring about timely attainment or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. See section 211(c)(4)(C). The requirements of section 211(c)(4) are discussed in further detail below.

IV. EPA Evaluation

A. General SIP Requirements

As discussed below, EPA has evaluated the submitted SIP revision and has determined that it is consistent with the requirements of the CAA and EPA regulations. On May 8, 1997, EPA found that the April 29, 1997 SIP revision conformed to EPA's completeness criteria in 40 CFR part 51, Appendix V.

[2] This section is currently codified in the ARS as section 41–2083(F).

The SIP submittal contains: ARS 41–2083(E) (now section (F)) as established in section 13 of 1993 Special Session House Bill 2001; documentation of the public notice and hearing regarding the SIP revision, dated March 17, 1994; evidence of State legal authority; and VOC air quality modeling. Additional supporting information regarding enforcement and compliance assurance for the SIP revision can be found in the ARS (specifically in Chapter 15, Department of Weights and Measures, of title 41) and the Arizona Administrative Code (ARC).

Arizona Department of Weights and Measures implements the RVP limit and has the necessary authority under the ARS and ARC to obtain samples (ARS 41–2066(A)), test (ARS 41–2083(c) and ARC R20–2–720), prohibit the sale of non-conforming gasoline (ARS 41–2066(A)(2) and ARC R20–2–110), and to impose civil penalties on any person who violates the fuel requirements of any provision of ARS 41–2083 (ARS 41–2115(a)). EPA has concluded that these provisions confer on the State the requisite authority to enforce compliance with the 7 psi RVP limit.

B. Section 211(c)(4)

1. Federal Preemption

CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a state from prescribing or attempting to enforce any control or prohibition on any characteristic or component of a fuel or fuel additive for the purposes of motor vehicle emission control if the Administrator has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component of the fuel or fuel additive, unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

EPA first proposed to regulate summertime gasoline RVP in 1987 (52 FR 31274). EPA's gasoline RVP proposal resulted in a two-phased final regulation that Congress incorporated into the CAA at section 211(h). Phase I of the regulation took effect in 1990 (54 FR 11868) for the years 1990 and 1991. Phase II of the regulation became effective in 1992 (55 FR 23658). These regulations are found in 40 CFR 80.27. Under the regulations, the continental United States is divided into two control regions, Class B and Class C. Generally speaking, the Class B states are the warmer southern and western states, and Class C states are the cooler northern states. The Phase II regulation

limits the volatility of gasoline sold during the high ozone season to 9.0 psi RVP for Class C areas and 7.8 psi RVP for Class B ozone nonattainment areas. Arizona is a Class B state and is therefore required under the federal rule to meet the 7.8 psi RVP standard.

Arizona has recently requested to opt into EPA's reformulated gasoline program (RFG). Should that opt in be approved as has been proposed, then the applicable federal standard for RVP in the Maricopa ozone nonattainment area would be dictated by the requirements of the RFG program. Like the RVP rule, the RFG regulation also divides the continental United States into two control regions: Region 1 and Region 2. The Maricopa area is in Region 1 and would be subject to a maximum RVP limitation of 7.2 psi under the federal RFG program. See 40 CFR 80.41.

Because Arizona's fuel requirement for the Maricopa nonattainment area limiting summertime RVP to 7.0 psi is not identical to the federal fuel standards applicable to the fuel characteristic RVP (i.e., federal phase II volatility limit of 7.8 psi or federal phase I RFG RVP limit of 7.2 psi), Arizona's requirement is preempted unless it is in the Arizona SIP.

2. Finding of Necessity

Section 211(c)(4)(C) allows a state to prescribe and enforce controls or prohibitions on the use of a fuel or fuel additive for the purposes of motor vehicle emission control if the control or prohibition is contained in the applicable SIP. Section 211(c)(4)(C) states that the Administrator may approve such provisions in a SIP:

> if [s]he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a state control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment.

Thus, to implement a state low RVP requirement, a state must submit a SIP revision adopting the state fuel control and must include specific information showing the measure is necessary to meet the ozone NAAQS, based on the statutory specifications for showing necessity.

The State, the Maricopa County air pollution control agency, and the local jurisdictions in Maricopa County have adopted and implemented a broad range of ozone control measures including the summertime low RVP limit of 7.0 psi, an enhanced inspection and maintenance (I/M) program, stage II vapor recovery, an employer trip reduction program, many transportation control measures, and numerous stationary and area VOC controls. See the *MAG 1993 Ozone Plan and Addendum*, Maricopa Association of Governments, March 1994.

The State has also recently adopted additional ozone control measures and undertaken additional planning efforts. In January of this year, the State requested that the Maricopa nonattainment area be included in EPA's reformulated gasoline (RFG) program to help avoid any ozone NAAQS exceedances.[3] Legislation passed in the 1997 session included adoption of California's off-road engine standards, a state reformulated gasoline program,[4] and new standards for industrial cleaning solvents. Finally, the Arizona Department of Environmental Quality (ADEQ) has developed a Voluntary Early Ozone Plan (VEOP) including air quality modeling and additional control measures beyond those included in the legislation.

The State's RVP SIP submittal includes the Urban Airshed Model (UAM) modeling demonstration from the draft VEOP. See Exhibit 6, Appendix B of the SIP submittal. The modeling used 1996 as the base year and evaluated the effects of existing and future control measures. Arizona's low RVP requirement is built into the 1996 base year inventory and modeled out to the 1999[5] and 2010 projected attainment years.

In addition to a low RVP requirement, Arizona evaluated all reasonable and practicable additional control measures that could be implemented in the Maricopa area. The fifteen control measures that were evaluated for 1999 are: (1) purge test in I/M (evaluated for 2010); (2) final I/M cutpoints; (3) I/M testing of constant 4-by-4 vehicles; (4) federal RFG (both Phase I and Phase II RFG at 7.2 psi RVP; (5) adoption of California standards for off-road mobile sources; (6) voluntary catalyst replacement program; (7) voluntary vehicle retirement program; (8) voluntary commercial lawn mower replacement; (9) new standards for the use of industrial cleaning solvents; (10) alternative fuels tax incentives; (11) Motor Vehicle Division registration enforcement and mandatory insurance; (12) pollution prevention; (13) temporary power at construction sites; (14) alternative-fueled buses; and (15) traffic light synchronization. See Exhibit 5 of the SIP submittal.

Results from the VOC modeling demonstration showed that, using 7.0 psi RVP gasoline plus all other measures identified including federal RFG, the Maricopa area still fails to attain the 12.0 ppm ozone NAAQS in 1999.[6] See Exhibit 5 of the SIP submittal. Given this result, it is clear that the State's low RVP requirement is a necessary component of the strategy to achieve timely attainment of the ozone strategy in the Maricopa area and that there are no other measures that are reasonable and practicable that would bring about timely attainment.

C. Adjustment of the RVP Lower Limit in the Federal Reformulated Gas Program

The federal RFG program includes standards for the RVP of gasoline. The *maximum* RVP of RFG is controlled primarily because of the increased VOC emissions that result from gasoline with higher RVP levels.

In addition, the *minimum* RVP standard addresses vehicle driveability problems, such as poor starting and running, that can occur when low volatility gasoline does not vaporize in the vehicle engine. As a result, under 40 CFR 80.42(c)(1), the nationwide summertime minimum RVP allowed for RFG is 6.6 psi, although under 40 CFR 80.45(f)(1) this minimum RVP standard changes to 6.4 psi beginning in 1998.

[3] By letter dated January 17, 1997, Governor Symington of the State of Arizona applied to EPA to include the Maricopa County moderate ozone nonattainment area in the federal RFG program. Pursuant to the Governor's letter and section 211(k)(6) of the CAA, EPA proposed an effective date for the federal RFG program of June 1, 1997 or 30 days after the publication of the final notice, whichever was later. See 62 FR 7164 (February 18, 1997).

[4] The State RFG program for the Maricopa area has two phases. By June 1, 1998, gasoline sold must meet standards similar to EPA's Phase I RFG program or California's Phase II RFG program. Starting May 1, 1999, gasoline must meet standards similar to EPA's Phase II RFG program or California's Phase II RFG program.

[5] 1999 was chosen as the modeling year because it is the next ozone attainment date in the Clean Air Act after 1996. See CAA 181(a)(1).

[6] The State is continuing to evaluate the results of the UAM modeling in the VEOP. See ''Status Report on the Metropolitan Phoenix Voluntary Early Ozone Plan,'' April 1997. This continuing evaluation may change some of the modeling results, such as the effect of NO_X controls on ozone concentrations. Given the continued exceedances of the ozone standard in the Maricopa area and the area's rapid rate of growth, it is very unlikely that revised modeling would show that implementation of all identified control measures, including the 7 psi RVP limitation, will reduce emissions more than is necessary for timely attainment.

Arizona has requested that EPA approve a SIP revision setting a maximum summertime volatility standard for the Maricopa area of 7.0 psi. As a result of today's approval of this SIP revision as well as Arizona's opt-in to federal RFG, refiners supplying RFG for the Maricopa area for use during the summer will have to meet an RVP standard of 6.6 psi minimum (a federal standard) and 7.0 psi maximum (the State imposed standard). At the March 18, 1997, public hearing and in subsequent comments to the Agency regarding the Maricopa area opt-in, various refiners suggested that this narrow RVP range would create gasoline production problems because of testing variability, but that this problem would be resolved if the RVP minimum standard were 6.4 psi. In addition, the American Automobile Manufacturers Association has indicated in a letter to EPA, dated April 4, 1997, that a summertime minimum RVP of 6.4 psi for use in the Maricopa area would not create vehicle performance problems. (See docket AZ–RVP–97.)

For these reasons, EPA believes it is appropriate to allow a minimum RVP of 6.4 psi for VOC-controlled RFG in the Maricopa area. As a result, EPA will forego enforcement of the 6.6 psi minimum RVP standard under section 80.42(c)(1) for VOC-controlled RFG used in the Maricopa area, including RFG produced for the Maricopa market that is used in non-RFG areas around Maricopa, provided the following conditions are met.

(1) RFG must meet a minimum RVP standard of 6.4 psi during the period May 1 through October 31.

(2) All other RFG must meet a minimum RVP standard of 6.6 psi.

(3) The refiner or importer must specify in the product transfer documents, required in section 80.77, the VOC-controlled RFG is for use only in the Maricopa covered area.

Enforcement of the RFG requirements in this manner will expire on January 1, 1998. (See EPA letter dated, April 18, 1997, to Urvan Sternfels, President, National Petroleum Refiners Association from Steven A. Herman, Assistant Administrator).

D. Conclusion

EPA has evaluated the submitted SIP revision and has determined that it is consistent with the CAA and EPA regulations. EPA has also found that Arizona's 7 psi RVP limit is necessary for attainment in the Maricopa ozone nonattainment area, as required by section 211(c)(4)(C) for approval into the SIP. Therefore, Arizona's requirement to limit summertime low RVP gasoline is being approved into the Arizona SIP under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 11, 1997, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 11, 1997.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility

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

This federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Therefore, because this action 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

EPA has determined that this approval action does not include a Federal mandate that may result in expenditures of $100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector in any one year. This Federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information

to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

E. 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 11, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and it will not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52:

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 28, 1997.

Felicia Marcus,

Regional 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]

Subpart D—Arizona

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.120 is amended by adding paragraph (c)(87) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(87) New and amended fuel regulations for the following Arizona Department of Environmental Quality plan revisions were submitted on April 29, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) Section 13 of H.B, 2001 (A.R.S. § 41–2083(E)), adopted on November 12, 1993.

[FR Doc. 97–15093 Filed 6–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA83–4062a; FRL–5835–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NO_X RACT Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires volatile organic compounds (VOC) and nitrogen oxides (NO_X) reasonably available control technology (RACT) on one major source. The intended effect of this action is to approve source-specific plan approvals. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective July 28, 1997 unless within July 11, 1997, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David J. Campbell, Pennsylvania RACT Team Leader, Mailcode 3AT22, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 566–2185, or by e-mail at lewis.janice@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On December 8, 1995 the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of one plan approval for one individual source of volatile organic compounds (VOCs) and/or nitrogen oxides (NO_X) located in Pennsylvania. Any plan approvals and operating permits submitted coincidentally with those being approved in this notice, and not identified below, will be addressed in a separate rulemaking action. This rulemaking addresses one plan approval pertaining to the following source: (1) Pennzoil Products Company (Rouseville, Venango County)—petroleum refinery.

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_X sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements [including RACT as specified in sections 182(b)(2) and 182(f)] apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

The December 8, 1995 Pennsylvania submittals that are the subject of this notice are meant to satisfy the RACT requirements for one source in Pennsylvania.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals can be found in the docket and accompanying technical support document and will not be reiterated in this notice. Briefly, EPA is approving one plan approval as RACT.

RACT

EPA is approving the plan approval of the following facility located in Pennsylvania: (1) Pennzoil Products Company (Rouseville, Venango County)—petroleum refinery—major source of NO_X emissions.

The specific emission limitations and other RACT requirements for these

sources are summarized in the accompanying technical support document, which is available from the EPA Region III office.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 28, 1997 unless within July 11, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 28, 1997.

Final Action

EPA is approving two plan approvals as RACT for one individual source located in Pennsylvania.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

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

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

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

E. 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 July 28, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the VOC and NO_X RACT determination for one source in Pennsylvania, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 23, 1997.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart NN of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(124) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(124) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NO_X RACT, submitted on December 8, 1995 by the Pennsylvania Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection):

(i) Incorporation by reference.

(A) Two letters, dated December 8, 1995 and September 13, 1996, from the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations in the form of one plan approval for the following source: Pennzoil Products Company (Rouseville, Venango County)—petroleum refinery.

(B) Plan Approval (PA):

(*1*) Pennzoil Products Company (Rouseville)—(PA–61–016) effective

September 8, 1995, except for condition Nos. 9 pertaining to non-VOC and non-NO_X pollutants and expiration date of the plan approval.

(ii) Additional Material.

(A) Remainder of the Commonwealth of Pennsylvania's December 8, 1995 submittal.

(B) Additional material submitted by Pennsylvania dated May 23, 1997, providing clarifying information related to Pennzoil Products Company plan approval.

[FR Doc. 97–15102 Filed 6–10–97; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–38

[FPMR Amendment G–111]

RIN 3090–AG26

Motor Vehicles

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to a final rule published in the **Federal Register** on Friday, January 3, 1997, 62 FR 322. FPMR Amendment G–111, which governs the management of motor vehicles.

EFFECTIVE DATE: January 3, 1997.

FOR FURTHER INFORMATION CONTACT: Sharon A. Kiser, Federal Acquisition Policy Division (202–501–216).

SUPPLEMENTARY INFORMATION: In rule document 97–52 appearing at 62 FR 322, GSA revised Part 101–38. This document corrects three errors.

Corrections

§ 101.38 [Corrected]

1. On page 324, second column, "**PART 101–38—MOTOR EQUIPMENT MANAGEMENT**" is corrected to read "**PART 101–38—MOTOR VEHICLE MANAGEMENT.**"

2. On page 325, the table in 101–38.104(b)(3) is corrected by adding the following footnotes.

"1 Established by section 502 of the Motor Vehicle Information and Cost Savings Act (89 Stat. 902, 15 U.S.C. 2002) and the Secretary of Transportation.

2 Established by the Secretary of Transportation and mandated by Executive Order 12003 through fiscal year 1981 and by Executive Order 12375 beginning in fiscal year 1982.

3 Fleet average fuel economy for light trucks is the combined fleet average fuel economy for all 4x2 and 4x4 light trucks.

4 Requirements not yet established by the Secretary of Transportation."

3. On page 328, first column, instruction 13 is corrected to read "13. Section 101–38.401–1 is amended by removing the introductory text, removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising paragraph (a) introductory text to read as follows:"

Dated: June 5, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–15229 Filed 6–10–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC52

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Castilleja levisecta (Golden Paintbrush)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines threatened status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Castilleja levisecta* (golden paintbrush). This species once occurred from Oregon to Vancouver Island in British Columbia, Canada. Ten populations of this plant now exist in open grasslands ranging from south of Olympia in Thurston County, Washington, north through the Puget Trough to southwest British Columbia, Canada. Threats to the species include competition with encroaching native and non-native plant species; habitat modification through succession in the absence of fire; and grazing by herbivores. Direct human-caused threats include conversion of habitat for residential and commercial development, conversion to agriculture, and possible damage associated with road maintenance. This rule implements the Federal protections afforded by the Act for this plant.

EFFECTIVE DATE: July 11, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Western Washington Office, North Pacific Coast Ecoregion, U.S. Fish and Wildlife Service, 510 Desmond Drive S.E., Suite 101, Lacey, Washington 98503–1273.

FOR FURTHER INFORMATION CONTACT: Dave Frederick, Supervisor, at the above Lacey address (telephone 360/753–9440).

SUPPLEMENTARY INFORMATION:

Background

Castilleja levisecta (golden paintbrush) was first collected near Mill Plain, Washington, by Thomas Jefferson Howell in 1880 and was described by Jesse More Greenman in 1898 (Greenman 1898). A perennial herb of the figwort family (Scrophulariaceae), *C. levisecta* typically has 1 to 15 erect to spreading unbranched stems, reaches a height of 30 centimeters (cm) (12 inches (in)), and is covered with soft, sticky hairs. The lower leaves are entire and narrowly pointed; the upper leaves are broader, usually with one to three pairs of short lateral lobes on the distal end. The flower, mostly hidden by the overlapping bracts, has a calyx 15 to 18 millimeters (mm) (0.6 to 0.7 in) long and deeply cleft, and a corolla 20 to 23 mm (0.8 to 0.9 in) long, with a slender galea (concave upper lip) three to four times the length of the unpouched lower lip (Hitchcock and Cronquist 1973). It is distinguished from the other *Castilleja* species within its range by brilliant golden to yellow floral bracts. The plant flowers from April to June. When not flowering, the plant is less conspicuous. The species may be semi-parasitic like other members of the genus *Castilleja*, possibly requiring a host plant for seedling development in its native habitat (Heckard 1962, Sheehan and Sprague 1984). However, greenhouse experiments indicate it does not require a host to survive and flower (Wentworth 1994).

The plant tends to grow in clumps. One genetic individual may consist of 1 to 15 stems, making the determination of exact numbers of individual plants in the field difficult. The number of stems per plant varies site to site. In addition, researchers have used a variety of census methods over the years. Therefore, population estimates can vary and a consistent approach is needed. Experimentally designed sampling surveys have been conducted where individual plants were tagged and counted (Wentworth 1994). Year to year variation in population densities can be high (G. Douglas, Conservation Data Center, British Columbia Ministry of Environment, Lands and Parks, pers. comm. 1996; Wentworth 1994).

Castilleja levisecta occurs in open grasslands at elevations below 100 meters (m) (328 feet (ft)) around the periphery of the Puget Trough. Most populations occur on glacially derived soils, either gravelly glacial outwash or clayey glacio-lacustrine sediments

(Sheehan and Sprague 1984, Gamon 1995). Associated species include *Festuca idahoensis, F. rubra, Camassia quamash, Holcus lanatus, Achillea millefolium, Pteridium aquilinum, Vicia* spp., and *Bromus* spp. (Gamon 1995). Frequent, low intensity fires can be important in maintaining habitat for plant species such as *C. levisecta.* Historically, periodic fires in the Puget Trough were instrumental in maintaining native grassland habitat by limiting successional encroachment of trees and shrubs (Agee 1993, Kruckeberg 1991, Sheehan and Sprague 1984).

Historically, *Castilleja levisecta* has been reported from over 30 sites in the Puget Trough of Washington and British Columbia, and as far south as the Willamette Valley of Oregon (Sheehan and Sprague 1984, Gamon 1995). In 1984, the Service granted funding to the Washington Natural Heritage Program (Washington Department of Natural Resources) to conduct an assessment of the status of the species throughout its range. The plant was found to be extirpated from more than 20 historic sites (Sheehan and Sprague 1984, Gamon 1995). Many populations were found to be extirpated due to conversion of habitat to agricultural, residential, and commercial development. In Oregon, *C. levisecta* historically occurred in the grasslands and prairie of the Willamette Valley; the species has been extirpated from all of these sites as the habitat has disappeared. The area around the type locality at Mill Plain, Washington, was converted to pasture and orchards some time after the plant was first collected there in 1880. Housing developments currently occupy the site (Sheehan and Sprague 1984, Gamon 1995).

Western Oregon and Washington (and southern Vancouver Island) have a maritime climate, characterized by wet, mild winters and cool, relatively dry summers. Annual precipitation averages 800 to 1350 mm (31 to 53 in) in the Puget-Willamette Trough (Sheehan and Sprague 1984).

Castilleja levisecta is now known from 10 extant populations. Eight populations occur in Washington—1 population south of Olympia in Thurston County, 5 populations on Whidbey Island in Island County, 1 population on San Juan Island in San Juan County, and 1 population on Lopez Island, Island County. The Lopez Island population consisted of 4 plants in May 1996 (J. Wentworth, Washington Natural Heritage Program, Botanist, pers. comm. 1996). A population of fewer than five individuals likely is not viable (J. Gamon, Washington Natural Heritage Program, scientist, pers. comm. 1996). In British Columbia, Canada, 2 populations exist on islands off of the southern coast of Vancouver Island (Ryan and Douglas 1994). A historic population at Beacon Hill in Victoria on Vancouver Island, British Columbia, Canada, has been surveyed annually from 1991 through 1996. Three plants were observed in 1991 but subsequent surveys have not found any plants and the site is presumed to be extirpated (Gamon 1995; G. Douglas, pers. comm. 1996).

The southernmost population of *Castilleja levisecta* occurs at the Rocky Prairie site south of Olympia, in Thurston County, Washington. The site is owned by the Washington Department of Natural Resources and is designated as a Natural Area Preserve that is managed primarily for protection of *C. levisecta* and *Aster curtus* (white-topped aster), and conservation of the remnant native grasslands of *Festuca idahoenis* (Idaho fescue) (J. Gamon, pers. comm. 1996). In 1983, the time of the last complete census, 15,000 plants were sporadically distributed throughout the 15-hectare (ha) (37-acre) site. A fire in 1985 reduced the southernmost patch of *C. levisecta,* and in 1991 the total population was estimated to be about 7,000 plants (R. Schuller, pers. comm. 1991, 1996).

Five populations are located on the north half of Whidbey Island, Island County, in Puget Sound. Three of these populations are located within the administrative boundary of the Ebey's Landing National Historic Reserve (Ebey's Landing, Fort Casey, and Bocker property), and are managed by a private landowner, Washington State Parks, and Seattle Pacific University, respectively.

The largest of the Whidbey Island populations occurs near Forbes Point at Crescent Harbor and is owned by the Department of Defense (Whidbey Island Naval Air Station). A census conducted for *Castilleja levisecta* in 1985 counted more than 10,000 flowering stems at the site (Clampitt 1985); the number of individual plants was not provided. The population was monitored in 1990, when it was estimated to be in the thousands, and again in 1991, when a reduction in density of about 25 percent was observed. A census was completed in May 1995. The population numbered 1,346 plants with 5,243 stems; approximately 50 percent of the 1985 total (Gamon 1995). The site has been mapped and measures about 20 by 60 m (66 by 197 ft) (Matt Klope, Whidbey Island Naval Air Station, pers. comm. 1996).

A second population on Whidbey Island is located at Fort Casey State Park where approximately 230 plants occur on a 0.04-ha (0.10-acre) site (Gamon 1995). The population declined from between 500 and 1,000 plants in the early 1980's, to 120 plants in 1993 (Gamon 1993; Fayette Krause, The Nature Conservancy, *in litt.,* 1994), and currently harbors about 230 individuals (Gamon 1995). This State-owned historic site is managed as a park for recreational use (Ken Hageman, Fort Casey State Park Manager, Washington Department of Parks, pers. comm. 1994).

A third Whidbey Island population of *Castilleja levisecta* occurs on and adjacent to the Bocker property. This population consists of 3 colonies—1 colony is 60×150 m (197×492 ft) on the property, a second colony is adjacent to the property in a 4 m^2 (43 ft^2) area, and a third colony is located near the ''Admiral's'' house and covers an area of 4.5×9 m (15×30 ft). In 1996, 306 individual plants existed (Wentworth, pers. comm. 1996), down from an estimated 1,200 plants in the mid-1980's (Krause, *in litt.* 1994). The property is owned by Seattle Pacific University and is used for environmental education courses (Keith Ludemann, Environmental Education Supervisor, Bocker Environmental Preserve, pers. comm. 1992), but no covenants or other restrictions on the property exist that prevent development.

A fourth Whidbey Island population occurs at Ebey's Landing in a 10–20 m ×100 m (33–66 ft×328 ft) area. This population on private land was estimated to be from 300 to 400 plants in 1984 (Sheehan and Sprague 1984) and more than 4,000 individuals in 1993 (Sheehan, *in litt.,* 1994; Gamon 1995). Differences in estimation techniques, such as counting individuals rather than flowering stems and estimates based on sampled population density are thought to contribute to the differences in population estimates between 1984 and 1993.

The fifth Whidbey Island population of *Castilleja levisecta* is located at West Beach, on a site less than 0.40 ha (1 acre) in size. The property is privately owned and is bisected by a county road. In 1991, the east side of the road supported 10 to 20 plants (M. Klope, pers. comm. 1991), whereas the entire West Beach population was estimated at approximately 200 plants in 1984 (Sheehan and Sprague 1984). A 1993 census of the site found 496 plants, while the 1995 census counted 550 plants west of the road (Gamon 1995). The apparent increase in this population may represent (1) a real increase in the population, (2) natural year-to-year fluctuation in population size, (3) differences in the way

individual plants were determined between 1993 and 1995, or (4) a more complete count was conducted in 1995. In a letter to the Island County engineer, a citizen reported that roadside maintenance activities by the county had resulted in the elimination of the plants on the east side of the road (Steve Erickson, Whidbey Environmental Action Network, *in litt.*, 1991). Subsequent field inspection by Washington Natural Heritage Program staff confirmed that the population on the east side of the road had been reduced to about five plants; however, the direct cause of the decline east of the road is unknown (Sheehan, *in litt.*, 1992; 1994).

The population on San Juan Island (San Juan County) is located on a privately owned parcel near the Mar Vista Resort at False Bay. The site is less than 1 acre in size, and supports a population of 128 plants (Gamon 1995).

The remaining population of *Castilleja levisecta* from the United States is on private land at Davis Point on Lopez Island, Island County, Washington. When first discovered in 1994, this occurrence consisted of a single plant. A census conducted in May 1996 found four plants. The viability of this population is questionable. Recently located photographic evidence from within the last 2 decades but prior to 1994, indicates the population was historically larger, with an estimated population size of approximately 100 plants. However, the area is now dominated by non-native grasses that likely have outcompeted *C. levisecta* at the site (Sheehan, *in litt.* 1994; J. Wentworth, pers. comm. 1996).

Two extant populations of *Castilleja levisecta* occur in British Columbia, Canada, on small islands near Victoria. Historically, *C. levisecta* was documented from nine sites on southeastern Vancouver Island, and on two adjacent islands. All but the two populations found on islands are extirpated or of unknown status but likely have been extirpated (Ryan and Douglas 1994). One population is located on Alpha Islet, consisting of 1,000 plants in an area of 100 m2 (33 by 33 ft), and is under the management of the Ministry of Parks (Ryan and Douglas 1994). A second population, estimated at 2,560 plants, in an area of about 0.5 ha (1.2 acre), is located on the Trial Islands and is currently managed by the Ministry of Parks as an Ecological Reserve (G. Douglas, pers. comm. 1996).

Castilleja levisecta is threatened by habitat modification through succession of grassland to shrub and forest habitat. Potential for expansion and persistence of refugia is low due to reduction of habitat. In addition, because the current distribution of the species has been greatly fragmented and reduced from the historic distribution, the species is vulnerable to other threats such as interspecific competition with native and alien woody species, reduced vigor and reproductive potential due to grazing by herbivores, and trampling or collecting during public recreational use of sites. Five sites are vulnerable because they are zoned for residential development or commercial use.

Previous Federal Action

Federal action on this species began when the Service published a Notice of Review for plants on December 15, 1980 (45 FR 82480). In this notice, *Castilleja levisecta* was included as a category 1 candidate. Category 1 candidates were formerly designated as those species for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but for which listing proposals had not been prepared due to other higher priority listing actions. Pending completion of updated status surveys, the status was changed to category 2 in the November 28, 1983, supplement to the Notice of Review (48 FR 53640). Category 2 candidates were formerly designated as those species for which information in possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threat were not currently available to support a proposed rule. *Castilleja levisecta* remained a category 2 candidate in the September 27, 1985, Notice of Review for plants (50 FR 39526). In the February 21, 1990, Notice of Review (55 FR 6184), *C. levisecta* was elevated to category 1 status, based on additional data collected by the Washington Natural Heritage Program. The species remained in category 1 in the September 30, 1993, Notice of Review for plants. On May 10, 1994, the Service published in the **Federal Register** (59 FR 24106) a proposal to list *C. levisecta* as threatened. The Service noted that the species was a proposed threatened species in the February 28, 1996, Notice of Review for Plants and Animals (61 FR 7596).

The 1994 proposal to list *Castilleja levisecta* as threatened was based primarily on information contained in status reports prepared by the Washington Natural Heritage Program and on personal communications with knowledgeable resource scientists and site managers. The comment period, originally scheduled to close on July 11, 1994, was extended for 30 days in a July 7, 1994, **Federal Register** publication (59 FR 34784) and closed on August 11, 1994.

The processing of this final rule conforms with the Service's listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events—1) The lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6), and 2) the restoration of funding for listing through passage of the Omnibus Budget Reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time there are no pending Tier 1 actions. This rule has been updated to reflect any changes in distribution, status and threats since the effective date of the listing moratorium. This additional information was not of a nature to alter the Service's decision to list the species.

Summary of Comments and Recommendations

In the May 10, 1994, proposed rule (59 FR 24106) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, The Nature Conservancy, and other interested parties were contacted and requested to comment. The Service published newspaper notices in The Seattle Times, The Olympian, The Whidbey News Times, The Centralia Chronicle, and The Journal of the San Juan Islands on July 13, 1994, inviting general public comment. Eleven comments, including those of one Federal agency (National Park Service), one State agency (Washington Department of Natural Resources Natural Heritage Program), one county agency, three conservation organizations, one university, two Canadian agencies, and two individuals, were received during the open comment period. All commenters supported the listing of *Castilleja levisecta* under the Endangered Species Act.

Several commenters provided information on the status of various populations of *Castilleja levisecta* that updated the information presented in the proposed rule. That information has been incorporated into the Background and Summary of Factors sections of this final rule. The primary issue of concern raised by commenters is the Service's intent to list this species as threatened rather than endangered. The five commenters that raised this issue all believe that endangered designation more accurately reflects the status of *C. levisecta*. Several arguments were expressed to support the contention that endangered status is warranted for *Castilleja levisecta*. Commenters stated that few populations of this species can be considered secure, even though several sites are designated as preserves or parks; the 2 populations at Fort Casey State Park and the Bocker property have documented declines; 5 privately owned sites (False Bay, Davis Point, Bocker property, Ebey's Landing, and West Beach) have the potential for development; populations in British Columbia, Canada, should not be assumed to be secure because the Service has little if any influence over how these populations are managed; the number of populations is down from at least 30 to only 10; and sites with fewer than 10 to 30 plants likely are not viable populations. The Service responds to the issue of preferred status as follows.

The Service considered several factors in proposing threatened status for *Castilleja levisecta*, including the number of populations, number of plants, rate of decline, distribution of the populations, current management of populations, and availability of techniques for reversing the decline. *Castilleja levisecta* was historically reported from more than 30 sites in Washington, Oregon, and British Columbia; today 10 sites are extant. These 10 sites are distributed in 3 counties in Washington and two islands in British Columbia, Canada. Five of the 10 extant populations contain 1,000 or more plants. Though 2 populations have declined in number by over 50 percent in the last decade, 2 populations contain higher numbers of plants than reported in the proposed rule. Active management to benefit *C. levisecta* is occurring at 4 sites (Rocky Prairie, Fort Casey, Forbes Point and West Beach). The Service agrees that designation of sites as preserves or parks does not in and of itself guarantee the reduction or removal of threats to a species such as *C. levisecta*. However, these designations do afford some level of protection against certain threats such as destruction of habitat, and can provide greater potential for implementing conservation measures to benefit the plant. With half the populations containing significant numbers of plants (i.e., 1,000 or greater), and the distribution spread across several counties in the United States and into southwestern Canada, the Service believes that threatened status is appropriate for *C. levisecta*.

Peer Review

The Service solicited the expert opinions of appropriate and independent specialists regarding pertinent scientific or commercial data relating to the biological and ecological information for *Castilleja levisecta*. Comments provided by John Gamon and Jane Wentworth, botanists with the Washington Department of Natural Resources' Natural Heritage Program were incorporated into the final rule. Mr. Gamon and Ms. Wentworth provided information supporting the position of the Service that *C. levisecta* was threatened by several factors at each occurrence of the species found in western Washington. Dr. George Douglas, Director, Conservation Data Center, Victoria, British Columbia, provided information supporting the position of the Service that *C. levisecta* was facing several threats at the two occurrences found in British Columbia, Canada.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Castilleja levisecta* should be classified as a threatened species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *C. levisecta* Greenman (golden paintbrush) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historic loss of prairie and grassland habitat in the Puget Trough has reduced the range of *Castilleja levisecta*, and habitat loss continues to be the primary threat to remaining populations. Currently, encroachment by native and alien woody species, as discussed in more detail under Factor E, is the primary cause of this habitat modification.

Development for residential or commercial use is a potential threat at five of the privately owned sites, False Bay, Davis Point, Bocker property, Ebey's Landing and West Beach. The three sites on Whidbey Island (Bocker property, Ebey's Landing and West Beach) are zoned for residential development (County Planning, Island Co. pers. comm. 1996). The site on San Juan Island (False Bay) is designated rural (Planning Department, San Juan Island County, pers. comm. 1996), indicating that the area is dominated by agricultural, forestry and recreational uses and can be used for the extraction of sand, gravel, and mineral deposits. This designation also allows residential development. The Davis Point population on Lopez Island is ''designated conservancy'' (Planning Department, San Juan Island County, pers. comm., 1996), which allows the construction of homes and the management of resources on a sustained-yield basis. Although no plans for development have been initiated at these sites, the habitat for these populations remains vulnerable to threats from adjacent areas that receive high human use (see Factor E for a more detailed discussion), and to the potential for development on these privately owned sites.

In recent history (since 1850), the suppression of fire has played a critical role in the reduction of grassland habitat in the Puget Trough (Kruckeberg 1991) and, therefore, in the reduction in numbers and sizes of *Castilleja levisecta* populations. In contrast, a large, high intensity fire at any of the remaining sites where *C. levisecta* occurs may eliminate populations, although the Service is unaware of permanent extirpations of this species due to fire.

Loss of suitable habitat from either encroachment of woody species or development in the areas surrounding the disjunct populations prevents expansion of the species and affords no refugia in the case of catastrophic events that affect existing populations. Because the grassland habitat in the areas surrounding the existing populations has been lost, it is doubtful that the populations would expand naturally. Thus, the continued existence of *Castilleja levisecta* is threatened by the absence of available habitat for recruitment and colonization.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Castilleja levisecta* has no known commercial use. Because of its showy golden-yellow bracts, *C. levisecta* is vulnerable to picking and collection at public sites. Fort Casey State Park, Bocker property, and Forbes Point are

sites with high levels of public use where collection and/or trampling are threats (see Factor E). For example, Fort Casey State Park receives a high amount of recreational use, and the potential for overcollection is considered a genuine threat. Visitor use has increased within the last decade, and park users have been observed picking the flowering plant (K. Hageman, pers. comm. 1994). Once numbering over 500 plants (Hageman, pers. comm. 1994; Krause, *in litt.* 1994), the Fort Casey State Park population had declined to approximately 230 individuals by 1995 (J. Gamon 1995; Krause, *in litt.* 1994). *Castilleja levisecta* may become vulnerable to collection by concerned citizens, amateur botanists and the general public as a result of increased publicity following publication of the final rule.

C. *Disease or predation.* Disease is not known to be a factor threatening *Castilleja levisecta.* Populations may have been reduced from historical levels by grazing by livestock and rabbits (Sheehan and Sprague 1984, Gamon 1995, J. Wentworth, pers. comm. 1996). Grazing of the flowering stems of *C. levisecta,* probably by rabbits and/or deer, has been observed at the Bocker property. Though the effect is unknown, presumably grazing affects seed number and reproductive viability (K. Ludemann, pers. comm. 1991; J. Wentworth, pers. comm. 1996)). Livestock and exotic feral rabbits also graze the False Bay population (Sheehan and Sprague 1984). In 1990 and 1991 at the Forbes Point site, Klope (pers. comm. 1996) observed heavy predation on herbaceous material and seeds by rodents. Grazing also was noted at Forbes Point in 1984 and 1985 (Clampitt 1985), which may be reducing the reproductive potential at that site. At Fort Casey State Park, all flowering stems of a small colony of *C. levisecta* were eaten by rabbits during the spring of 1996, thus eliminating seed set and reproduction for the current year (J. Wentworth, pers. comm. 1996).

The Rocky Prairie Natural Area Preserve population of *Castilleja levisecta* has historically harbored a population of the Whulge checkerspot butterfly (*Euphydryas editha taylori*), a State sensitive species that is a potential seed predator. Because *C. levisecta* is not a specific host and no individual butterflies were observed at the site in 1991, the threat is likely low (M. Sheehan, pers. comm. 1991; F. Krause, The Nature Conservancy, pers. comm. 1996). Insect larvae have been observed feeding on inflorescences (flowering parts) of *C. levisecta* (Gamon 1995). Although several species of caterpillar were known to prey on *C. levisecta* (Sheehan and Sprague 1984, Evans *et al.* 1984), they are not believed to currently pose a threat (J. Wentworth, pers. comm. 1996).

Predation (grazing and seed predation) by native species is one of the natural pressures historically faced by *Castilleja levisecta,* but populations that have been reduced or stressed due to other factors are more vulnerable to decline and are less able to rebound after periods of heavy predation.

D. *The inadequacy of existing regulatory mechanisms.* Currently, no regulatory mechanism provides for the protection of *Castilleja levisecta* or its habitat. *Castilleja levisecta* is listed as endangered by the Washington Natural Heritage Program (Washington Natural Heritage Program 1994). However, no State Endangered Species Act exists for plants in Washington and no legal protection is provided by the Washington Natural Heritage Program listing classification of endangered. The province of British Columbia uses The Nature Conservancy's rating system and has designated *C. levisecta* as a category G1S1 species (critically imperilled due to extreme rarity or because of vulnerability to extinction, and with typically less than 5 occurrences) (G. Douglas, pers. comm. 1996). Four sites are included among the Natural Heritage Program's Registry of Natural Areas (Laura Smith, Associate Director, The Nature Conservancy, Washington State Office, pers. comm. 1996). All of these designations are important because they recognize the sensitive status of the species and encourage private land owners and management agencies to consider the species in management plans; however, they provide no legal protection. Therefore, changing land management priorities or inadequate funding for protection could leave the species vulnerable at several of the sites.

The Rocky Prairie Natural Area Preserve population has the highest level of protection of the 10 sites. This State-owned site has been actively managed to eliminate alien species, including the use of prescribed burning and hand removal of invasive plants. Seven acres of the encroaching Douglas-fir (*Pseudotsuga menziesii*) were directionally felled and removed from Rocky Prairie during the winter of 1996. This effort was accomplished through a cooperative agreement between the Service's Washington State Ecosystems Conservation Program and the Washington Department of Natural Resource's Natural Heritage Program. Despite these efforts to restore prairie composition and structure by reducing shade onto the site and improve the conditions of the native prairie habitat, continued funding of restoration cannot be assured. Additionally, efforts by the Washington Department of Natural Resources to eliminate the invasive *Cytisus scoparius* (Scotch broom) and *Hieracium pilosella* (mouse-ear hawkweed) at this site are voluntary and not statutorially required. This population continues to face threats from invasion of woody species.

Another publicly-owned population occurs in Fort Casey State Park. Park managers have implemented vegetation management measures (mowing, clipping and removing vegetation) to improve the conditions of the grassland habitat, and protective measures (fencing) to restrict trampling the *Castilleja levisecta* plants. However, the plant continues to be vulnerable to encroaching vegetation, picking (see Factor B), trampling, grazing and seed predation.

The Forbes Point population occurs on Federal land at Whidbey Island Naval Air Station. The Department of Defense is participating in the Washington Registry of Natural Areas Program. A Navy staff biologist has undertaken measures to evaluate the status of the population. Efforts have also been made to eradicate some invasive non-native species. A fence has been constructed to restrict people trampling or picking the plants and to keep rabbits from browsing *Castilleja levisecta;* however, rodents still enter the fenced area and consume seed (M. Klope, pers. comm. 1996). Signs have been erected designating the site as a research area, but the Navy does not prohibit public use of this site, which receives occasional foot traffic associated with a nearby popular beach (M. Klope, pers. comm. 1996).

The populations of *Castilleja levisecta* at Ebey's Landing and the Bocker property are also listed on the Washington Registry of Natural Areas. Ebey's Landing is on private property within the designated boundary of Ebey's Landing National Historic Reserve. The Bocker property, owned by Seattle Pacific University, is currently managed as a natural area used for education purposes with no active management to retain grassland habitat. The Bocker property is also located within the designated boundary of Ebey's Landing National Historic Reserve. Although *C. levisecta* is considered in the current management of the Historic Reserve, management is not specifically directed toward the long-term conservation of the plant. As a result, the population is threatened by predation and invasion of native Douglas-fir and alien woody plants.

Ebey's Landing, Bocker property, West Beach, Davis Point, and False Bay populations of the species are on private property and receive no legal protection.

The Ebey's Landing National Historic Reserve was established by the combined efforts of the local land owners, the National Park Service, and the U.S. Congress to give recognition to the local land owners for maintaining their dwellings and landscapes in a specific historic fashion. The Historic Reserve designation serves as a form of covenants that restrict the type of landscaping and architectural design used for the maintenance or remodeling of any existing structures or the construction of new structures within Ebey's Landing National Historic Reserve. The National Historic Reserve designation does not prohibit development or extraction of natural resources and provides no protection for biological resources. The National Park Service's jurisdiction over Ebey's Landing National Historic Reserve is only advisory in nature and is limited to providing technical assistance to State and local governments and local land owners in the management, protection, and interpretation of the Historic Reserve (Gretchen Luxenberg, National Park Service, pers. comm. 1997; Curt Soper, Director of Agency Relations, The Nature Conservancy, pers. comm. 1997; Stacey Tucker, Island County Planning and Community Development Department, pers. comm. 1997).

The *Castilleja levisecta* populations in Canada receive no regulatory protection. Legislation to protect endangered species has been proposed to the British Columbia government, but currently no Federal or Provincial law protects sensitive species. The Trial Islands, offshore from the city of Victoria, are designated as an Ecological Reserve by the British Columbia Ministry of Parks. The small population at Alpha Islet also is located within a designated Ecological Reserve. Ecological Reserves are protected areas that generally require permits for entry and do not allow consumptive activities, like plant collection or other activities destructive to resources (L. Ramsey, Conservation Data Center, Ministry of Environment, Lands and Parks, British Columbia, pers. comm. 1997). However, the Ecological Reserve designation does not require specific management recommendations for the plant. Because this designation is an administrative one, it could potentially be reversed by administrative decision, and the site could be used for other purposes (G. Douglas, pers. comm. 1996).

In summary, most populations occur in areas designated as reserves or parks; 4 sites receive active management to benefit the species and help prevent habitat destruction. However, habitat management for *Castilleja levisecta* is not assured nor coordinated among the various population sites.

E. *Other natural or manmade factors affecting its continued existence.* Grassland habitat has historically been maintained by periodic fires that prevented encroachment of woody plant species (Sheehan and Sprague 1984; J. Agee, pers. comm. 1996). Fire suppression in recent years has led to invasion of grasslands by native species such as Douglas-fir, *Rosa* sp. (wild rose), and *Berberis aquifolium* (barberry). Encroachment by alien species such as *Cytisus scoparius* and *Hieracium pilosella* also occurs. These species are invasive and can dominate some areas and compete with *Castilleja levisecta* for space, light, and nutrients.

Interspecific competition is a serious threat to the continued existence of *Castilleja levisecta.* Loss of grassland habitat due, in part, to invasion of woody species threatens the plant at the Rocky Prairie Natural Area Preserve (J. Wentworth, pers. comm. 1996; Krause, *in litt.* 1994; Sheehan, *in litt.* 1994), Bocker property (K. Ludemann, pers. comm. 1991; Krause, *in litt.* 1994; Sheehan, *in litt.* 1994; J. Wentworth, pers. comm. 1996), Ebey's Landing (Jim Larson, Chief, Division of Natural Resources, National Park Service, pers. comm. 1991; J. Gamon pers. comm. 1996), West Beach (M. Mills, pers. comm. 1996; Krause, *in litt.* 1994; Sheehan, *in litt.* 1994), and Forbes Point (M. Klope, pers. comm. 1996; Krause, *in litt.* 1994; Sheehan, *in litt.* 1994) sites. *Castilleja levisecta* cannot survive under a closed canopy, such as that formed by Douglas-fir, wild rose, barberry and the alien *Cytisus scoparius.* Those species may also outcompete *C. levisecta* for root space and nutrients (Sheehan and Sprague 1984). The species appears to be unable to compete successfully against species that tend toward monoculture (J. Gamon, pers. comm. 1996).

Four populations of *Castilleja levisecta* on Whidbey Island (Fort Casey State Park, Forbes Point, Bocker property, and West Beach) are also threatened with tree and/or shrub succession. If left unchecked, encroachment of wild rose and *Rubus* sp. (blackberry) will eliminate the population at the West Beach site (M. Mills, pers. comm. 1996). Clampitt (1985) noted the encroachment of several aggressive plants into *C. levisecta* habitat at Forbes Point, like blackberry, *Vicia* sp. (vetch), and *Trifolium* sp. (clover). Invasive shrubs and Douglas-fir, which shades out *C. levisecta,* are competing with *C. levisecta* at the Bocker property site. Numbering over 1,200 individuals in 1984, the population had declined to 295 individuals by 1995 (J. Gamon 1995).

While fire may improve the grassland habitat for *Castilleja levisecta,* the impacts associated with fire prevention may be a threat. An example of this took place August 9–11, 1996, in Thurston County, Washington. A fire was ignited from the spark of a train that runs adjacent to Rocky Prairie. The fire burned grasses and shrubs for greater than 10 miles of the railroad right-of-way and emergency vehicles were activated to suppress the fire. To access the fire adjacent to Rocky Prairie, the fence surrounding Rocky Prairie Natural Area Preserve was cut at two locations to allow access of fire prevention vehicles. Vehicles ran directly over a portion of the *C. levisecta* population, breaking and compacting individual plants. Damage to plants and habitat are often the result of the fire suppression activities associated with wildfires (James Agee, pers. comm. 1996).

Trampling by recreationists may threaten the plant at Fort Casey State Park on Whidbey Island where paths had been worn into the soil and pass directly through a *Castilleja levisecta* population. A decorative fence erected in 1995 partially restricts foot traffic through the *C. levisecta* population and trampling by the public at this site has been reduced (J. Gamon, pers. comm. 1996), although invasion by wild rose remains a threat. The few plants that formerly occurred in Beacon Hill Municipal Park in Victoria were located in a heavily used area of the park. Trampling by the public may have contributed to the species extirpation at Beacon Hill (G. Douglas, pers. comm. 1996).

None of the private ownerships have been fenced or are otherwise protected. The West Beach occurrence of *Castilleja levisecta* is surrounded by beach front homes and foot traffic passes through the population to access the beach. Adjacent property owners maintain their lawns with fertilizers and herbicides. Aerial drift from these chemical treatments that come in contact with *C. levisecta* is a potential threat. Across Fort Casey Road from several new homes, the population on the Bocker property is threatened by foot traffic. At False Bay, several foot paths have been established through the population and individual plants have been trampled. The only access to the

beach from the resort at False Bay is through the population. At Davis Point, *C. levisecta* is found on a small patch within a 30-acre overgrown lot; pasture grasses and wild rose are abundant and threaten to overtake *C. levisecta.* This site has not been managed and the *C. levisecta* population has declined from about 100 plants prior to 1994 to 4 individuals in 1996 (Wentworth 1996). The Ebey's Landing occurrence is adjacent to a road on a steep hillslope overlooking the ocean. Erosion and slumping have occurred on the slope and potentially threaten the species at this location. Ebey's Landing is a recreation area with foot paths leading to the plants and trampling has been documented (Jane Wentworth, pers. comm. 1997).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to list *Castilleja levisecta* as threatened. Threats to *C. levisecta* include habitat modification through succession of prairie and grassland habitats to shrub and forest lands; development of property for commercial, residential and agricultural use; low potential for expansion and refugia due to constriction of habitat; recreational picking; and herbivory.

Several of the sites are designated as preserves or afforded some level of protection from certain threats through current management efforts, and 50 percent of the populations contain 1,000 or more individuals. The Service, therefore, believes the species is not currently in danger of extinction. However, because the remaining populations are threatened by the chronic factors described above, like successional modification and potential development of its habitat, *Castilleja levisecta* is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The species, therefore, fits the definition of threatened as defined by the Act. Critical habitat is not being proposed for this species for reasons discussed in the Critical Habitat section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. Such a determination would provide no additional protection to *Castilleja levisecta* and could increase the degree of threat to the species. As discussed above under Factor B in the Summary of Factors Affecting the Species, *C. levisecta* is vulnerable to collecting. Publication of precise maps and critical habitat descriptions in the **Federal Register** would be likely to increase the degree of threats from collecting and vandalism, and would increase enforcement problems.

Critical habitat protections apply only to Federal actions and, therefore, critical habitat provides no protection for populations occurring on State or private land absent a Federal nexus. In addition, even where such a nexus occurs, designation of critical habitat generally provides no additional protection beyond that provided by listing. In particular, even though three populations of *Castilleja levisecta* located within the administrative boundary of Ebey's Landing National Historic Reserve (the first population is on private property, the second population is on State park land, and the third population is owned by Seattle Pacific University), the enabling legislation (National Parks and Recreation Act, 1978, P.L. 95–625, section 508) that established Ebey's Landing National Historic Reserve does not provide the National Park Service the authority to manage biological resources on the private or State property within this National Historic Reserve. The National Park Service's jurisdiction over Ebey's Landing National Historic Reserve is only advisory in nature (G. Luxenberg, National Park Service, pers. comm. 1997).

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. As such, designation of critical habitat may affect non-Federal lands only where such a Federal nexus exists. Federal agencies must insure that their actions do not result in destruction or adverse modification of critical habitat. Aside from this added consideration under section 7, the Act does not provide any additional protection to lands designated as critical habitat. Designating critical habitat does not create a management plan for the areas where the listed species occurs; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat.

In addition, all involved parties and landowners have been notified of the importance of the species' habitat. Protection of its habitat can be addressed through the recovery and section 7 consultation processes. Therefore, the Service finds that designation of critical habitat for *Castilleja levisecta* is not prudent at this time, because a designation would increase the threat posed by taking (i.e., vandalism, collection) and other human activities, and because the designation of critical habitat would not be beneficial to the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing can encourage and result in conservation actions by Federal, State, and private agencies, groups, and individuals. Recovery efforts encourage communication and cooperative efforts among various land managers and owners. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. Funding may be available through section 6 of the Act for the State to conduct recovery activities. This may assist in protection and recovery efforts at Rocky Prairie Natural Area Preserve and Fort Casey State Park, sites owned by the State of Washington. The protection required by Federal agencies and prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, regardless of whether the activity occurs on Federal or non-Federal lands, the responsible Federal agency must enter into formal consultation with the Service. The population of *Castilleja levisecta* at Forbes Point occurs on Federal land at Whidbey Island Naval Air Station. Federal actions there would be subject to section 7 requirements. The National Park Service administers Ebey's Landing National Historic Reserve, where three populations of *C. levisecta* are located on private lands. The National Park Service's jurisdiction over the Reserve is advisory in nature.

However, in the event the National Park Service funded or carried out any activities that may affect the species, it would be required to consult with the Service. In addition, sections 2(c)(1) and 7(a)(1) of the Act require Federal agencies to utilize their authorities in furtherance of the purposes of the Act to carry out conservation programs for endangered and threatened species.

The Act and implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. With respect to *Castilleja levisecta*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal any for any person subject to the jurisdiction of the United States to import or export endangered or threatened plants; transport any such plant in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale such species in interstate or foreign commerce; remove and reduce such species to possession from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of ''cultivated origin'' appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63 and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild.

The proposal incorrectly stated that the Act prohibits any person from removing, cutting, digging up, damaging, or destroying any endangered or threatened plant on areas that are not under Federal jurisdiction in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. This prohibition under section 9(a)(2)(B) currently applies only to plant species listed as endangered. Section 4(d) of the Act allows for the provision of such protection to threatened plants through regulation. This protection may apply to threatened plants including *Castilleja levisecta* in the future if regulations are promulgated.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. Such information is intended to clarify the potential impacts of a species' listing on proposed and ongoing activities within the range of the species. In the case of *Castilleja levisecta*, unauthorized collection at Forbes Point would constitute a violation of section 9 because this site is under Federal jurisdiction; collection occuring under a Federal threatened species permit for scientific or recovery purposes would not result in a violation of section 9. Collection or destruction of *C. levisecta* on private or other non-Federal lands are not a violation of section 9. However, when a project occurring on non-Federal lands requires Federal authorization, funding or permiting and the project may affect listed species, including listed plants, the action agency must consult with the Service under section 7 of the Act to ensure that the Federal action (e.g., issuance of a Federal permit) will not jeopardize the survival of the species. Absent a Federal action, the Act does not provide protection to threatened plants on private lands. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Supervisor, Western Washington Office, North Pacific Coast Ecoregion, U.S. Fish and Wildlife Service, 510 Desmond Drive, S.E., Suite 101, Lacey, Washington 98503–1273, telephone 360/753–9440.

Requests for copies of the regulations on plants and inquiries regarding them, including permits, may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181, telephone 503/231–2063.

Required Determinations

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

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Authors:

The authors of this final rule are Leslie Propp and Ted Thomas, U.S.

Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under Flowering Plants, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Castilleja levisecta ...	Golden paintbrush ..	U.S.A. (OR, WA), Canada (B.C.).	Scrophulariaceae	T	615	NA	NA
*	*	*	*	*	*		*

Dated: May 16, 1997.

Jay L. Gerst,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–15245 Filed 6–10–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC19

Endangered and Threatened Wildlife and Plants; Threatened Status for the Alaska Breeding Population of the Steller's Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Alaska breeding population of the Steller's eider (*Polysticta stelleri*) to be threatened pursuant to the Endangered Species Act of 1973, as amended. This determination is based upon a substantial decrease in the species' nesting range in Alaska, a reduction in the number of Steller's eiders nesting in Alaska, and the resulting increased vulnerability of the remaining breeding population to extirpation. This rule implements the Federal protection and recovery provisions of the Act for this species. Critical habitat is not being designated at this time.

EFFECTIVE DATE: July 11, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ecological Services Fairbanks Field Office, U.S. Fish and Wildlife Service, 101 12th Avenue, Box 19, Fairbanks, Alaska, 99701, telephone (907) 456–0441 or facsimile (907) 456–0208.

FOR FURTHER INFORMATION CONTACT: Ted Swem, Wildlife Biologist, at the above address (telephone (907) 456–0441).

SUPPLEMENTARY INFORMATION:

Background

The Steller's eider is the smallest of four eider species. It was first described by Pallas in 1769 as *Anas stelleri* and was subsequently grouped with the other eiders in the genus *Somateria.* The Steller's eider is now recognized as a monotypic genus, *Polysticta stelleri* (American Ornithologists' Union 1983).

The adult male Steller's eider has a white head with a greenish tuft and a small black eye patch, a black back, white shoulders, and a chestnut breast and belly with a black spot on each side. Adult females and juveniles are mottled dark brown. Both adult sexes have a blue wing speculum with a white border. The Inupiat Eskimo name for this eider is Iginikkauktuk and Yupik Eskimos call them Anarnissaguq. The Siberian Yupik name used by residents of St. Lawrence Island is Aglekesegak.

Steller's eiders are sea ducks that spend the majority of the year in shallow, near-shore marine waters where they feed by diving and dabbling for molluscs and crustaceans (Petersen 1980). Principal foods in marine areas include bivalves, crustaceans, polychaete worms, and molluscs (Petersen 1980, Troy and Johnson 1987, Metzner 1993).

During the breeding season, Steller's eiders move inland in coastal areas, where they nest adjacent to shallow ponds or within drained lake basins (King and Dau 1981, Flint *et al.* 1984, Quakenbush and Cochrane 1993). In inland areas, their diet includes aquatic insects (primarily chironomid larvae), plant materials, crustaceans, and mollusks (Cottam 1939, Quakenbush and Cochrane 1993).

The current breeding distribution of the Steller's eider encompasses the arctic coastal regions of northern Alaska from Wainwright to Prudhoe Bay up to 90 kilometers (km)(54 miles) inland (King and Brackney 1993), and Russia from the Chukotsk Peninsula west to the Taimyr, Gydan and Yamal peninsulas (American Ornithologists' Union 1983, Yesou and Lappo 1992). Actual numbers nesting in Alaska and Russia are unknown but the majority of Steller's eiders nest in arctic Russia (Palmer 1976, Bellrose 1980).

After the nesting season, Steller's eiders return to marine habitats where they molt (Jones 1965; Petersen 1980, 1981). Concentrations of molting Steller's eiders have been noted in Russia (Gerasimov in Kistchinski 1973), near St. Lawrence Island in the Bering Sea (Fay 1961), and along the northern shore of the Alaska Peninsula (Jones 1965; Petersen 1980, 1981). In some years, groups of tens of thousands may molt in the bays and lagoons along the Alaska Peninsula, in particular Nelson Lagoon and Izembek Lagoon (Petersen 1980). In other years, many of the birds complete their molt before arriving on the Peninsula (Jones 1965). Band

recoveries show that both Russia and Alaska nesting Steller's eiders come together to molt in southwestern Alaskan waters (Jones 1965).

During winter, most of the world's Steller's eiders concentrate along the Alaska Peninsula from the eastern Aleutian Islands to southern Cook Inlet in shallow, near-shore marine waters (Palmer 1976). They also occur, although in lesser numbers, in the western Aleutian Islands and along the Pacific coast, occasionally to British Columbia (Palmer 1976). A small number also winter along the Asian coast, from the Commander Islands to the Kuril Islands (Palmer 1976), and some are found along the north Siberian coast west to the Baltic States and Scandinavia (Dement'ev and Gladkov 1967, Frantzen 1985, Petraitis 1991, Frantzen and Henricksen 1992). In spring, large numbers concentrate in Bristol Bay before migration; in 1992, an estimated 138,000 Steller's eiders congregated before sea ice conditions allowed movement northward (Larned *et al.* 1994).

Species Status, Worldwide

The status of Steller's eiders worldwide has been poorly documented. The species occurs primarily in Russia during the nesting season, where few population censuses have been conducted. The rest of the year is spent in marine areas where large-scale surveys are difficult and expensive, and distribution varies within and among years in response to weather and other factors (Jones 1965). Therefore, the variance in repeated counts in specific areas is too high to identify statistically significant population trends (Robert Stehn, U.S. Fish and Wildlife Service, pers. comm., 1994). Also, relative to many other waterfowl species, Steller's eiders have not been an important sport or subsistence species so have received less attention.

Although the factors mentioned above have contributed to the lack of population information, anecdotal observations suggest that Steller's eider numbers may have been declining range-wide for a number of decades. Dement'ev and Gladkov (1952) reported that the enormous flocks wintering near the Commander Islands at the turn of the century were greatly reduced by the 1930s. Similarly, Murie (1959) wrote ''it is also clear that there has been a great diminution in numbers.''

More recently, the number of wintering Steller's eiders may have declined along the Alaska Peninsula, where the majority of the worldwide population winters (Larned *et al.* 1994). Several biologists who have studied or censused the species in this area believe that Steller's eider numbers have decreased, possibly to a considerable degree, during the past few decades (Chris Dau, U.S. Fish and Wildlife Service, pers. comm., 1994; Jim King, U.S. Fish and Wildlife Service, ret., pers. comm., 1994; Margaret Petersen, National Biological Service, pers. comm., 1994; Robert Stehn, National Biological Service, pers. comm., 1994). However, disagreement exists as to the certainty and extent of a population decline.

In summary, there is concern that Steller's eiders may be declining in number range-wide, but the magnitude of any change in population size is unknown because of a lack of precise population estimates. The worldwide population is still sizable; 138,000 were counted in Bristol Bay in 1992 (Larned *et al.* 1994), and it is likely that this count did not include the entire worldwide population. Thus, this rule does not include the entire range of the species but includes only those Steller's eiders that nest in Alaska.

Species Status, Alaska Breeding Population

Historically, Steller's eiders nested in Alaska in two general regions: western Alaska, where the species has been essentially extirpated, and the North Slope, where the species still occurs. In western Alaska, Steller's eiders occurred primarily in the coastal fringe of the Yukon-Kuskokwim (Y–K) Delta, where the species was common at some areas in the 1920s, was still present in the 1960s, but is virtually absent as a breeder today (Kertell 1991). On the North Slope, Steller's eiders historically occurred from Wainwright east, nearly to the United States-Canada border (Anderson 1913, Brooks 1915). The species may have abandoned the eastern North Slope in recent decades, but it still occurs at low densities from Wainwright to at least as far east as Prudhoe Bay.

Trends in Distribution—Information on both historical and current distribution of Steller's eiders in Alaska is limited. However, it is certain that Steller's eiders once nested over a considerably larger area in Alaska than they do now. Although the species no longer nests on the Y–K Delta, early qualitative assessments indicated the species was ''common'' at several coastal sites in the central Y–K Delta (Murie 1924, Conover 1926, Brandt 1943). Specifically, the species was found nesting near Kokechik Bay (Brandt 1943), along the Kokechik River (Murie 1924, Conover 1926), and near Hooper Bay (Dufresne 1924). Additionally, Alaska Natives reported that large numbers nested on Nelson Island in 1924 (Murie 1959) and Gillham (1941) found them ''in considerable number'' in the intertidal reaches of the lower Kashunuk River in 1941. No systematic searches were conducted for Steller's eiders on the Y–K Delta during this period, so the extent of their nesting distribution and abundance was never determined.

By the 1960s or 70s, the species had largely vanished from the Y–K Delta. Researchers (Johnsgard 1964, Kessel *et al.* 1964, Holmes and Black 1973) failed to find any nests in the Kokechik Bay area in the 1960s, whereas the species was described as ''surprisingly common''' in the area in 1924 (Brandt 1943). Although pairs displaying nesting behavior were observed near the Kashunuk River as late as 1973, no nests were found in the area after 1963 (Kertell 1991). Nesting was documented along the Opagyarak River in 1969 and again in 1975; the single nest found in 1975 was the last documented nesting attempt on the Y–K Delta (Kertell 1991) until a pair nested unsuccessfully near the Kashunuk River in 1994 (Paul Flint, National Biological Service, pers. comm., 1994).

Steller's eiders also apparently nested in low numbers in southwestern Alaska, on the Seward Peninsula, and on St. Lawrence Island. The species was reported to nest ''sparingly'' on Agattu Island in the western Aleutians in the 1880s and a nest was found at Unalaska in the eastern Aleutians in 1872. A ''few'' nested at the western end of the Alaska Peninsula in the 1880s or 1890s (Murie 1959). A single nest was found on the Seward Peninsula in 1879 (Portenko 1981) and a few nests were found on St. Lawrence Island as late as the 1950s (Fay and Cade 1959). None have been found nesting in any of these areas since. Apparently, Steller's eiders nested in several widely scattered areas in western Alaska in addition to the Y–K Delta, but presumably in low numbers, and they probably ceased nesting in these areas many years ago.

Near Barrow, at the northernmost tip of Alaska, Steller's eiders still occur regularly, though not annually. In some years, up to several dozen pairs may breed in a few square kilometers. The area immediately surrounding Barrow is relatively accessible, and bird studies have been conducted there for decades. As a result, there are records of the species' presence or absence from 1900 (Stone 1900, in Gabrielson and Lincoln 1959), 1958 (Myres 1958), and 1975–1981 (Myers and Pitelka 1975, Myers *et al.* 1976–1981). In 1991, more intensive

studies on the nesting biology, predation, and habitat selection of Steller's eiders in the area were initiated (Quakenbush *et al.* 1995). In contrast, elsewhere on the North Slope, the species apparently occurs at extremely low densities over a huge area and use of specific areas appears to be irregular. Evidence of nesting elsewhere from Barrow has been documented only twice in recent years; females with young were seen in 1993 near Prudhoe Bay (Michele Johnson, University of California, Davis, pers. comm., 1994) and in 1987 along the Colville River (T. Swem, unpubl. Service data). As a result, the vast majority of both historical and recent observations of the species on the North Slope come from Barrow. While part of this distinction may be attributable to the differences in accessibility and search effort between Barrow and elsewhere, it is also true that Steller's eiders seem to favor the Barrow vicinity. Unfortunately, because of the scarcity of observations elsewhere, it is currently impossible to determine how important the Barrow area is to the Alaska breeding population as a whole.

Sightings made during extensive aerial waterfowl breeding pair surveys provide the most comprehensive view of the distribution of Steller's eiders on the North Slope. Waterfowl are counted annually from systematically located transects that sample approximately 2 percent of the 63,210 sq km (24,404.12 sq mi) of waterbird habitat on the arctic coastal plain of Alaska between the northwest coast of Alaska and the Alaska-Canada border (Brackney and King 1993). Between 1989 and 1995, Steller's eiders were seen on 76 separate occasions during these surveys, with sightings ranging from single birds up to flocks containing 20 individuals (Brackney and King 1993, King and Brackney 1995). All 76 sightings were west of the Colville River or in the Colville River drainage (Alan Brackney, U.S. Fish and Wildlife Service, pers. comm., 1994; Rod King, U.S. Fish and Wildlife Service, pers. comm., 1995), indicating that the species currently occurs predominantly in the northwestern portion of the North Slope. Within the large area in which birds were seen, sightings were widely distributed and ranged up to about 90 km (54 mi) inland from the coast. Despite the large area over which sightings occurred, very few were observed. In 1993, for example, only 20 of 2,617 ducks seen along 3,300 km (1,980 mi) of transects were Steller's eiders (Brackney and King 1993), an average of one Steller's eider per 165 km of survey route.

In recent years, efforts have been made to search for eiders or, in some cases, specifically for Steller's eiders, on the North Slope. From 1992 to 1996, extensive aerial searches for nesting eiders were conducted on the arctic coastal plain of the North Slope. These searches sampled approximately 4 percent of a 42,000 sq. km (16,215 sq. mi) area. A maximum of 12 Steller's eiders per year was recorded during these searches (Larned *et al.* 1992; Larned and Balogh 1994; Balogh and Larned 1994; Bill Larned, U.S. Fish and Wildlife Service, *in litt.*, 1995; B. Larned, pers. comm., 1996). In 1994, 59 plots, 2.6 sq. km (1 sq mi) in size, were intensively searched for Steller's eiders from a helicopter in a 7,041 sq. km (2,718.39 sq. mi) area (Laing 1995); none were encountered. In 1995, intensive aerial searches were conducted in two specific areas, near Teshekpuk Lake and near the mouth of the Chipp River, where Steller's eiders have been observed previously; none were observed (Robert Ritchie, ABR Inc., *in litt.*, 1995). The low number of Steller's eiders observed during extensive searches of suitable habitat and intensive searches of previously occupied areas indicates that the species occurs at extremely low densities on the North Slope.

Steller's eiders have been observed recently near Prudhoe Bay during intensive eider searches conducted from the ground. Although the species was not recorded during the 1980s (North 1990; Declan Troy, Troy Ecological Research and Associates, pers. comm., 1995), a few pairs were seen each year between 1992 and 1994 (D. Troy, pers. comm., 1995), and a female with young was seen in 1992 (M. Johnson, pers. comm., 1994).

Observations of local residents and early naturalists indicate that the species originally occupied the eastern North Slope, whereas none have been seen in this region for several decades. For instance—(1) Bill Patkotak, a resident of Wainwright, saw Steller's eiders near Collinson Point, Camden Bay in the 1930s, but none have been seen in this area for many years; (2) Anderson (1913) recorded the species at Barter Island but none have been reported there for many years; and (3) Brooks (1915) noted the species at Demarcation Bay but none have been seen there since. It is unknown how widespread or numerous the Steller's eider was throughout the eastern North Slope, but apparently the species has abandoned this region in recent decades.

In the central North Slope, Steller's eiders have also abandoned some local areas where they historically nested. Steller's eiders nested near Cape Halkett (north of Teshekpuk Lake) in the 1940s, and bred commonly at Nikilik on the Colville River Delta (P. Sovalik in Myres 1958). Although these areas are within the broad region occupied by Steller's eiders, none have been seen in these specific areas for decades, despite continued observation (Jim Helmericks, pers. comm., 1995).

Trends in Numbers

Although Steller's eiders are seen and counted during extensive waterfowl surveys and breeding eider surveys, these observations cannot be used to precisely estimate the number of Steller's eiders on the North Slope for three reasons—1) the species-specific probability of detecting Steller's eiders during aerial surveys has not been determined (Rod King, pers. comm., 1994), therefore it is impossible to use the number of sightings in the area sampled to estimate the number of birds actually present in the sample area; 2) so few Steller's eiders are seen during surveys that confidence intervals around estimates of the total number in the study area are extremely wide; and 3) it is unknown whether Steller's eiders are evenly or unevenly distributed, and differences in distribution greatly affect the precision of population size estimates (Alan Brackney, pers. comm., 1995). As a result, no statistically meaningful population size estimates are available for the North Slope. However, two waterfowl researchers who have conducted extensive aerial waterfowl surveys on the North Slope in recent years subjectively estimate that hundreds to a few thousand Steller's eiders inhabit the region (Bill Larned, pers. comm., 1995; Rod King, pers. comm., 1995).

Since there are no reliable counts of Steller's eiders from which to calculate a trend, all conclusions about trends must be made by inferring that the number of Steller's eiders decreased as the species' range in Alaska contracted. It is unknown how many Steller's eiders nested historically on the Y–K Delta, but Kertell (1991) estimated that a maximum of 3,500 pairs may have nested on the Delta. This estimate was made by extrapolating from the number nesting in one sample plot in 1951 and 1961–1966 to the entire vegetated intertidal zone of the central Y–K Delta. This estimate could be biased, however, if the number in this study plot was not representative of coastal areas in the central delta in general, or if numbers in the 1960s were not representative of

historical population size. Regardless of the number occurring historically on the delta, however, the number of Alaska breeding Steller's eiders decreased with its extirpation from western Alaska, including the Y–K Delta, the Aleutians, Alaska and Seward Peninsulas, and St. Lawrence Island.

Similarly, the number of Steller's eiders nesting on the North Slope has also likely decreased in recent decades as a result of their abandonment of several previously used nesting areas. Although birds using these areas could have shifted to other areas of the North Slope, there have been no indications that numbers have increased in other areas or that Steller's eiders have colonized previously unused areas in recent decades.

Additionally, anecdotal observations suggest that numbers may have decreased in one area on the North Slope in which Steller's eiders are still found. Inupiat elders from Wainwright recall that the species was common near Wainwright many years ago, which corresponds with the observations of Bailey (1948) and D. Bodfish (in Myres 1958). Now, Steller's eiders are considered rare near Wainwright and none have been found nesting there for several years (Quakenbush 1993).

In addition to changes in distribution and numbers, anecdotal observations suggest that Steller's eiders may be successfully nesting in fewer locations than in previous decades. In recent decades, nesting Steller's eiders have been documented in only three areas—(1) at Barrow; (2) on the lower Colville River, where a female with young was seen in 1987 (T. Swem, unpubl. data); and (3) near Prudhoe Bay, where a female with young was seen in 1993 (M. Johnson, pers. comm., 1994). In earlier decades, Steller's eiders were found nesting at Wainwright (Bailey 1948), inland on the Meade River (Bailey 1948), Admiralty Bay (Reed 1965), at the confluence of the Chipp and Ikpikpuk Rivers (Bailey 1948), the mouth of the Ikpikpuk River (nest and oological records from the Western Foundation of Vertebrate Zoology), the Topaguruk River (Bee 1958), and Pitt Point (Gabrielson and Lincoln 1959). Although birds have been detected in these general areas in recent years, no nests have been found despite increasing interest in the species. Breeding may resume in these areas; Steller's eiders near Barrow show considerable annual variation in reproductive effort and performance (Myers and Pitelka 1975a,b; Myers *et al.* 1977–1981; Quakenbush *et al.* 1995, L. Quakenbush, U.S. Fish and Wildlife Service, pers. comm., 1996).

In summary, the breeding range of Steller's eiders in Alaska has contracted in recent decades. The species no longer nests on the Y–K Delta or other areas in western Alaska, and is now found exclusively on the North Slope. Breeding range on the North Slope may also have contracted. Apparently the species is no longer found in areas historically occupied on the eastern North Slope and in at least two other areas on the central North Slope. Current and historical population sizes remain unknown, but overall numbers have likely declined. Steller's eiders still occur over a large area on the North Slope, but at such low densities that only hundreds or a few thousand occupy the huge expanse of seemingly suitable habitat. Although dozens of pairs periodically nest near Barrow, only two nests have been documented elsewhere on the North Slope in recent years.

Petition Background

On December 10, 1990, the Service received a petition from Mr. James G. King of Juneau, Alaska, dated December 1, 1990, to list the Steller's eider as endangered throughout its range and to designate critical habitat on the Yukon Delta National Wildlife Refuge and the National Petroleum Reserve in Alaska. Pursuant to section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), the Service determined on May 8, 1992, that listing the Steller's eider was warranted, but precluded by listing actions for higher priority species (57 FR 19852).

In August 1993, the Service reviewed the status of the species and concluded that the available information did not support listing range-wide, but did support listing the Alaska breeding population. On July 14, 1994, the Service proposed to list this population as threatened (59 FR 35896).

At the time of publication of the proposed rule, the Service implemented a policy requiring that listing proposals be reviewed by at least three independent specialists (59 FR 34270). To comply with the new Service policy requiring peer review the Service reopened the public comment period on June 30, 1995 (60 FR 34225), and solicited the opinions of seven independent specialists.

The completion of the listing process for this species was also affected by legislation (Public Law 104–6) signed into law on April 10, 1995, that prevented the Service from making final determinations on listing actions during Fiscal Year 1995. This moratorium was extended until April 26, 1996, by continuing budget resolutions. When the moratorium was lifted, the Service established listing priority guidance (61 FR 24722) that gave highest priority to emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings. Following receipt of its fiscal year 1997 appropriation, the Service issued revised listing priority guidelines (61 FR 64475). However, the Tier 1 and Tier 2 priorities are unchanged from the previous guidelines. This final rule falls under Tier 2. At this time there are no pending Tier 1 actions; therefore, the processing of this final listing rule conforms with the Service's current listing priority guidance.

This rule constitutes the final determination resulting from the listing proposal and all comments received during both comment periods.

Summary of Comments and Recommendations

In the July 14, 1994, proposed rule (59 FR 35896) and associated publications, all interested parties were requested to submit factual reports or information that might contribute to the development of a proposed rule. Appropriate Federal and State agencies, borough, city, and village governments, scientific organizations, and other interested parties were contacted and requested to comment. Notices inviting public comments were published in the Anchorage Daily News and Fairbanks Daily News-Miner. On June 30, 1995, the comment period was reopened (FR 60 FR 34225), and again, appropriate parties were contacted and invited to comment. Comments were received from a total of nine parties during the two comment periods, including the North Slope Borough, the Alaska Department of Fish and Game, the Federal Aviation Administration, three conservation organizations, two oil companies, and one private individual. No one requested a public hearing on the proposal. Of the comments, four supported listing, four were neutral, and one, the Alaska Department of Fish and Game, opposed listing.

Peer reviewers were selected from a group of recognized experts on seaduck or eider population monitoring, modeling, or management. Individuals with possible conflicts of interest in listing were not selected to ensure an unbiased review. Seven individuals, who had published a combined total of 453 articles on relevant topics in peer-reviewed scientific journals, were selected. Four were employed by the Canadian Wildlife Service, two by universities, and one by the U.S.

National Biological Service (now the U.S. Geological Survey Biological Resources Division). Five of the seven individuals that were selected reviewed the proposal and supporting documents. All five supported listing the Alaska breeding population as threatened, and one of the five suggested that the population should be classified as endangered.

Written comments received during the comment periods are addressed in the following summary. Comments from all respondents, including the peer reviewers, are combined. Because multiple respondents offered similar comments in some cases, comments of a similar nature or point are grouped. These comments and the Service's responses are as follows:

Comment: The Alaska Department of Fish and Game does not believe that the Alaska breeding population is currently, or ever was, a discrete or significant part of the world population. Therefore, they believe it is inappropriate to consider this segment of the population a listable entity, and they are opposed to listing.

Service response: In recognizing distinct vertebrate population segments for purposes of listing, delisting, or reclassifying species under the Endangered Species Act, the Service currently uses guidelines published in the **Federal Register** on February 7, 1996 (61 FR 4721). To qualify as a listable vertebrate population, the population must be both discrete in relation to the remainder of the species to which it belongs, and significant to the species to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions:

1. It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or

2. It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

In the case of Alaska breeding Steller's eiders, the population is discrete by both criteria above. First, Alaska breeding Steller's eiders are physically separated from Asia nesting populations by hundreds of kilometers across the Bering and Chukchi seas. Second, the Alaska breeding population of Steller's eiders is delimited by international boundaries. Within these international boundaries differences in conservation status exist. While available information suggests that the species in Russia also may have declined, population numbers are estimated to range well over 100,000 birds. However, the status of the breeding population in the U.S., as inferred by the contraction of nesting range, is reduced considerably from historic times, despite the existence of regulatory protections and an abundance of seemingly suitable habitat.

If a population is considered discrete under one or both of the above conditions, its biological and ecological significance will then be considered in light of Congressional guidance (Senate Report 151, 96th Congress, 1st Session) that the authority to list distinct vertebrate population segments be used ''sparingly''' while encouraging the conservation of genetic diversity. In carrying out this examination, the Service considers available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. This consideration may include, but is not limited to, the following:

1. Persistence of the distinct vertebrate population segment in an ecological setting unusual or unique for the taxon;

2. Evidence that loss of the distinct vertebrate population segment would result in a significant gap in the range of a taxon;

3. Evidence that the distinct vertebrate population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

4. Evidence that the distinct vertebrate population segment differs markedly from other populations of the species in its genetic characteristics.

Loss of the Alaska breeding population of Steller's eiders would represent a significant reduction in the species' breeding range worldwide. Steller's eiders nested historically along many hundreds of kilometers of coastline in southwestern Alaska and the North Slope, which are two separate, major biogeographic regions of the State. On the North Slope, the species currently occurs from the north coast to as much as 90 km inland, and from Wainwright in the west to Prudhoe Bay in the east, so its current range covers a sizable area. Additionally, because it historically also occurred on the Y–K Delta, other areas in southwestern Alaska, and the eastern North Slope, its historical range in Alaska was considerably more extensive.

In addition, the Service finds that another factor is pertinent. Alaska is the only location in the United States where the species breeds. As such, Alaska is the only portion of the species' breeding range over which the United States government can exercise its authority to provide for the conservation of the species during nesting. If, as some researchers believe, the species is declining range-wide (Jim King, pers. comm., 1994, Margaret Peterson, pers. comm., 1994, Chris Dau, pers. comm., 1994, Robert Stehn, pers. comm., 1994), the importance of providing for the conservation of the species in Alaska will increase. Furthermore, by securing the survival of the Alaska breeding population, access to the species for scientists to identify the factors controlling the population and causing declines in other areas will be facilitated. Ultimately, this may be essential to the survival of the species as a whole. As a result of the extent of the species' historical breeding range in Alaska, and the potential future importance to the worldwide population, the Service finds that the disappearance of the Alaska breeding population of Steller's eiders would be a significant loss to the species as a whole.

Comment: Accounts suggest that the abundance of Steller's eiders near Barrow has varied widely among years. It is likely that Steller's eiders have always been rare on the North Slope and reflect a failure to thrive, typical of birds in suboptimal range.

Service response: Little is known of annual variation in Steller's eider population size and breeding performance. However, recent studies have found Steller's eider numbers in the Lena River Delta in Siberia to vary tremendously among years, as well (Diane Solovieva, Lena Delta Nature Reserve, pers. comm., 1995 to L. Quakenbush). This suggests that the variation in abundance seen at Barrow may be typical of Steller's eiders in general, rather than peculiar to Barrow or symptomatic of birds on the periphery of the eastern end of the species' range. Furthermore, although Steller's eiders occur at low densities on the North Slope, they occur over an extensive area so that possibly hundreds or as many as a few thousand may occur there (Bill Larned, pers. comm., 1994; Rod King, pers. comm., 1994) Historically, they were likely even more numerous, as they have apparently abandoned the eastern North Slope and some other local areas in the northwestern North Slope. Therefore, although historical abundance is impossible to determine, the Service does not agree that the current apparent

scarcity of the species implies that the North Slope is suboptimal habitat.

Comment: Kertell's (1991) estimate of the number of Steller's eiders nesting on the Y–K delta was a gross extrapolation from a single small plot surveyed only seven times during 16 years. The use of Kertell's estimate is a poor basis for a listing action. Furthermore, it is doubtful that the species was ever very abundant on the Y–K Delta, and their occurrence in this region was marginal.

Service response: Kertell's (1991) estimate of the number of Steller's eiders was not the basis for this listing. His estimate was based upon an extrapolation from one small plot to a large expanse of habitat deemed to be similar at a very coarse scale. This extrapolation would have overestimated historical population size if the density within that single plot exceeded the average density in the areas outside the plot, which is quite possible. Conversely, if density within the plot had declined by the 1950s and 1960s, this extrapolation would have underestimated historical population size. The latter case is supported by the observation that Steller's eiders had disappeared from nearby Kokechik Bay by the 1960s although the species was common there in 1924 (Brandt 1943). For these reasons, the Service agrees that it is impossible to retrospectively estimate historical population size with any degree of accuracy.

However, while we have no reliable estimate of historical population size, Steller's eiders were considered to be common by several observers in several locations in the Y–K delta (Murie 1924, Dufresne 1924, Conover 1926, Gillam 1941, Brandt 1943, Murie 1959). If Steller's eiders were equally common in large areas with comparable habitat, the total number occupying the delta would have been sizable.

Comment: Steller's eiders should be listed throughout their range, not just the population that breeds in Alaska.

Service response: Concern that Steller's eiders have declined in number range-wide remains a concern but additional data are needed. Regardless of any possible worldwide population decline, at least 138,000 Steller's eiders wintered in southwest Alaska in 1992 (Larned *et al.* 1993). Based upon this large recent count, the Service finds that the species is neither in danger of extinction nor likely to become endangered within the foreseeable future (the definitions of endangered and threatened species, respectively).

Comment: The Alaska breeding population should be listed as endangered.

Service response: As defined in the Act, an ''endangered species''' is in danger of extinction while a ''threatened species''' is likely to become an endangered species within the foreseeable future. The information currently available to the Service indicates that the species regularly occurs in low numbers near Barrow. Although no more than a few dozen pairs occur there, there is no suggestion that the number near Barrow has declined since the late 1960s, when the earliest observations were made. Elsewhere on the North Slope, the species is thought to number in the hundreds to a few thousand (Bill Larned, pers. comm., 1994; Rod King, pers. comm., 1994). This information indicates that threatened status is the most appropriate designation at this time. The Service will continue to actively collect and evaluate status information on Steller's eiders and may propose reclassification at any time, should this become warranted.

Comment: Critical habitat should be established in order to protect nesting, molting, and wintering areas.

Service response: This issue is addressed under the section entitled ''Critical Habitat''' in this rule.

Comment: The impacts of oil and gas development have been inadequately addressed.

Service response: The past and potential future impacts of oil and gas development remain largely unknown. Currently, considerable effort is expended to research and monitor the effects of oil and gas activities and the resultant habitat alteration upon spectacled eiders and other birds near Prudhoe Bay. Likewise, one of the objectives of ongoing studies of the ecology of Steller's eiders near Barrow is to identify the effects of all forms of human disturbance upon the species, including those of the local gas pipeline and the accompanying service road. Knowledge of the impacts of oil and gas development will increase as these studies proceed. It is important to note, however, that it appears that the species may be tolerant of oil and gas development. Steller's eiders regularly nest within a few hundred meters of a gas pipeline near Barrow, and the majority of nests found in recent years in Alaska have been in proximity to ''Gaswell Road,''' which parallels this pipeline. Furthermore, one of the only two successful nests found elsewhere from Barrow in recent years was located near Prudhoe Bay, the most heavily developed oil field in Alaska.

In addition to comments pertaining to listing or the designation of critical habitat, several respondents suggested management or research objectives that could assist in conservation efforts. Specific recommendations were:

(1) A conservation plan to protect important Steller's eider habitat should be explored;

(2) Educational programs at villages within the range of Steller's eiders should be expanded to reduce shooting and egging and to encourage the reporting of sightings of the species; and

(3) More information on the impacts of hunting should be gathered, including subsistence harvest, and accidental and illegal shooting by sport hunters.

The Service agrees that these suggested actions have potential for contributing significantly to the conservation of the species in Alaska. Each will be thoroughly considered during development of recovery strategies.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Alaska breeding population of the Steller's eider should be classified as a threatened species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Alaska breeding population of the Steller's eider (*Polysticta stelleri*) are as follows:

A. *Present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat destruction is not known to be a major factor in the decline of Steller's eiders in Alaska. The species disappeared from the Y–K Delta and the eastern North Slope although only a very small portion of the habitat in those areas has been affected by human activities. Other waterfowl species continue to nest in large numbers in these areas, demonstrating that what little habitat modification has taken place has not precluded waterfowl nesting. Habitat modification and destruction do not appear to have played a major role in the decline of breeding Steller's eiders in Alaska. However, the factor or factors causing the decline are not understood.

On the North Slope, the current range of Steller's eiders is largely contained within the National Petroleum Reserve-Alaska (NPR–A), which was set aside for oil and gas development. The National Petroleum Reserve Productions

Act of 1976 encourages expeditious leasing and permitting of oil exploration and development activities in Petroleum Reserves. Although very little of NPR–A has been leased, future leasing is possible in areas where industry interest is sufficient. Potential impacts of oil and gas exploration and development on nesting Steller's eiders are not known but Steller's eiders have nested successfully at Barrow within a few hundred meters of a gas pipeline and the accompanying service road and Steller's eiders frequently feed in ponds within meters of the pipeline (Lori Quakenbush, pers. comm., 1995).

All but two recent, known nests of Steller's eiders in Alaska have been near Barrow, which is the largest Native village in northern Alaska. The human population of Barrow increased 58 percent in 10 years, from 2267 in 1980 to 3469 in 1990 (Harcharek 1992), and village expansion is likely to continue in the future. Housing developments, gas field access and development, and conveyance of land from the Ukpeagvik Inupiat Corporation to shareholders could lead to nesting habitat loss and disturbance to nesting birds. (Also see discussion of increasing predators around human use areas under factor C.) Although Steller's eiders nest successfully along heavily used all-terrain vehicle trails and directly under approach lanes to the airport that are used daily by large jets and numerous smaller aircraft (Lori Quakenbush, pers. comm., 1995), the indirect effects of development and human presence can be detrimental to Steller's eiders. Of 15 adult Steller's eiders found dead near Barrow in 1991–1994, one presumably died from striking wires and five had been shot (Quakenbush *et al.* 1995).

Much of the former Steller's eider breeding range in western Alaska is within the Yukon Delta National Wildlife Refuge and is protected from major development although some of the habitat where the species previously bred is on Alaska Native land where Federal involvement in protection is low. However, the likelihood that large-scale development will take place in this remote region is limited. Because of the large amount of unaltered habitat available on the Y–K Delta, it is unlikely that the recovery of Steller's eiders and the development of Native-owned private lands in the area will both proceed to the point that they conflict.

Steller's eiders occupy a vast expanse of marine habitat during the non-nesting season. Within the marine distribution of the Steller's eider the environment has likely been affected by any number of human activities, including marine transport, commercial fishing, and environmental pollutants. However, there is no evidence that modifications of the marine environment have caused the decline of the Alaska breeding population of Steller's eiders. Substantial portions of the important molting and wintering areas have been designated as National Wildlife Refuges, State Game Refuges, or State Critical Habitat Areas.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Because of the small numbers taken, overutilization is unlikely to have caused the decline of Alaska Steller's eiders or their extirpation from the Yukon-Kuskokwim Delta. In the past, some Steller's eider eggs were collected in Alaska for avicultural exhibition and trade but the issuance of Federal permits for collecting Steller's eider eggs for avicultural purposes was terminated in 1987. A few dozen Steller's eiders were taken annually before 1991 by collectors and sport waterfowl hunters on the Alaska Peninsula and Kodiak and Nunivak islands (Robin West, U.S. Fish and Wildlife Service, pers. comm., 1991), but this was prohibited by Service policy in 1991. The Service will continue to collect information on any taking of Steller's eiders. The Service will consider listing the Russian population when in Alaska under the similarity of appearance provision of section 4(e) of the Act if such is deemed necessary to facilitate enforcement of taking of the Alaska breeding population.

C. *Disease or predation.* Disease is not known to be affecting the population at present, but small, restricted populations are more vulnerable to all decimating factors, including disease.

Natural predators of Steller's eiders in Alaska include raptors, gulls, jaegers, ravens, and foxes. Kertell (1991) hypothesized that arctic foxes (*Alopex lagopus*) may have contributed to the extirpation of Steller's eiders on the Yukon-Kuskokwim Delta by increasing predation pressure when major goose populations in the region crashed during the 1960s, but this remains unproven.

Some predators may be increasing in number as a result of human habitation and development. Predators and scavengers such as gulls, ravens, and foxes have increased in number due to the availability of refuse and handouts (Paul O'Neil, Animal and Plant Health Inspection Service, Animal Damage Control, pers. comm., 1993). Gulls and ravens are effective predators of eider eggs and young, and foxes depredate eggs, young, and adults. Predation is likely to increase near communities where refuse is available and could significantly affect eiders in these areas. In fact, of 15 adult Steller's eiders found dead near Barrow between 1991 and 1994, 7 were believed to have been killed by predators. In addition, of 26 nests found, 17 failed and 8 of these failures were believed to have been caused by avian predators or foxes (Quakenbush *et al.* 1995). It is unknown how the rate of predation of eiders and eider nests has been affected by the possible artificial increase of predators in the Barrow area.

D. *The inadequacy of existing regulatory mechanisms.* Subsistence and sport hunting of waterfowl are regulated under authority of the Migratory Bird Treaty Act (16 U.S.C. 703–711). Spring and summer subsistence hunting of eiders in Alaska is currently in violation of the Migratory Bird Treaty Act, which prohibits hunting for most migratory birds between March 10 and September 1. The Service recognizes, however, that residents of certain rural areas in Alaska depend on waterfowl as a customary and traditional source of food. As a result, the Service has exercised discretion in enforcing seasonal restrictions to allow for traditional subsistence use of many species. Starting in 1994, the Service included Steller's eiders on the closed season species list, indicating that restrictions on taking Steller's eiders during all seasons would be enforced as violations of the Migratory Bird Treaty Act. Recently, modifications to the treaty have been made to legalize subsistence harvest during spring and summer, although implementation awaits ratification by the U.S. Senate. Once ratified, hunting between March 10 and September 1 will be permissible after suitable regulations are adopted. These regulations will be formulated to accommodate the conservation needs of individual species, such as Steller's eiders.

Historically, Alaska Natives hunted Steller's eiders and their eggs for food at several villages (Braund *et al.* 1989; Wentworth 1993; James Sheridan, U.S. Fish and Wildlife Service, pers. comm., 1993), but many villages along the Steller's eider migration route have not been surveyed so the total annual subsistence harvest is unknown (Cynthia Wentworth, U.S. Fish and Wildlife Service, pers. comm., 1993). However, Steller's eiders are not a preferred species (Quakenbush and Cochrane 1993), and they have been taken in far fewer numbers than the other three eider species (Klein 1966, Nelson 1969, Johnson 1971). While not an important subsistence species, Steller's eiders are occasionally killed

incidental to hunting of preferred species. Although apparently limited, this take may threaten the small breeding segment near Barrow and possibly near other villages. Ongoing Service information and education programs aimed at gaining support in Native villages for protection of Steller's and spectacled eiders continue.

Sport hunting of Steller's eiders was prohibited in 1991. A few may still be shot accidentally or illegally by sport hunters but the number taken, although unknown, is likely small.

E. *Other natural or manmade factors affecting its continued existence.* Some natural or manmade factor(s), currently unknown, caused the extirpation of the Steller's eider from the Y–K Delta and the eastern North Slope in Alaska. Several possible factors have been proposed but supporting evidence is lacking. Two possible factors warranting discussion are changes in the Bering Sea environment where Steller's eiders molt and winter, and ingestion of lead shot on the Y–K Delta.

Recent changes in the Bering Sea ecosystem have been proposed as a possible factor affecting the spectacled eider (Stehn *et al.* 1993), which was classified as threatened in 1993 due to rapid population declines on the Y–K Delta and elsewhere within its range. Increasing Pacific walrus (*Odobenus rosmarus*), gray whale (*Eschrichtius robustus*), and sea otter (*Enhydra lutris*) populations may have restructured the marine community that forms the prey base of these species (Stehn *et al.* 1993, Kvitek *et al.* 1992), and this in turn may have affected other members of the community. Similarly, changes in commercial fishing pressure may also have affected the marine ecosystem with possible effects upon marine birds, including eiders (Stehn *et al.* 1993).

Recently, other species in the Bering Sea have declined in numbers, including Steller's sea lions (*Eumatopias jubatus*) and oldsquaws (*Clangula hyemalis* (Stehn *et al.* 1993). Declines in these species may have been caused by the restructuring of the trophic system outlined above or, alternatively, the declines may suggest a general deterioration of the Bering Sea ecosystem caused by contamination or other factors. There is currently no documentation of a link between changes in the marine environment in Alaska and a contraction of the breeding range of Steller's eiders in Alaska.

It has recently been shown that lead shot, used for hunting waterfowl for many decades on the Y–K Delta, is being ingested by spectacled eiders with potentially serious effects upon adult survival (Margaret Petersen, pers. comm., 1994). Although nontoxic shot is now legally required for waterfowl hunting, illegal use of lead shot on the delta continues. Furthermore, it appears that lead shot may remain in tundra wetland areas for many years, possibly decades, after deposition (Margaret Petersen, pers. comm., 1994). There is no evidence indicating that ingestion of lead shot caused the extirpation of Steller's eiders on the Y–K Delta but the ingestion of lead shot may have affected the species in some heavily hunted areas. Furthermore, residual lead shot could potentially impair recovery of the species if Steller's eiders ingest lead shot which remains in areas that Steller's eiders recolonize. The Alaska Department of Fish and Game and U.S. Fish and Wildlife Service are implementing educational programs, to be followed by increasing enforcement, aimed at eliminating the use of lead shot.

Steller's eiders that nest on Alaska's North Slope are the only remaining breeding population within the jurisdiction of the United States. As a result of their low numbers and restricted breeding range, the Alaska breeding population is at risk from natural and human-caused factors. Major storms, predation or disturbance could severely deplete Steller's eiders numbers on the North Slope and lead to extirpation of this remnant population. The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this final rule. Based on this evaluation, the preferred action is to list the Alaska breeding population of the Steller's eider as threatened. While probably not in immediate danger of extinction, Steller's eiders that breed in Alaska could become endangered in the foreseeable future if the population declines further.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Alaska breeding population of Steller's eiders at this time. Service regulations (50 CFR 424.12(a)(1) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Section 7(a)(2) and regulations codified at 50 CFR Part 402 require Federal agencies to ensure, in consultation with the Service, that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their habitat. The current nesting range of the Steller's eiders on the North Slope is largely contained within the NPR–A. Upon this rule taking effect, oil and gas exploration and other activities that may affect the continued existence of the Alaska breeding population of Steller's eider will be addressed through the section 7 consultation process to ensure that these activities do not jeopardize the survival and recovery of the species. In addition, wetland filling and other activities subject to Federal authorization will undergo consultation to avoid detrimental impacts. In the fall, winter, and spring, the eiders disperse to marine areas in southern Alaska also used by large numbers of other waterfowl and birds. Most of these areas, including Y–K Delta where the Steller's eider historically nested, have been designated as National Wildlife Refuges and are currently managed to ensure that Federal and other activities do not deleteriously affect these bird concentrations. The Service believes that Federal involvement in both the nesting and wintering areas where the species may occur can be identified and addressed without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat is not prudent at this time because it would result in no known benefit to the species not already afforded by the Act. Protection of this species' habitat will also be addressed through the section 7 and recovery processes and, as appropriate, through the section 10 habitat conservation planning process.

Available Conservation Measures

Conservation measures provided for species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and local governments and private organizations, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies

and the prohibitions against taking and harm are discussed below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of endangered or threatened species or to destroy or adversely modify its critical habitat. If an action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service anticipates consultation with the U.S. Army Corps of Engineers and the U.S. Department of Transportation to avoid impacts to Steller's eiders from wetland fill permitting and other activities on the North Slope. Consultations to identify potential effects on Steller's eiders are also expected with the U.S. Bureau of Land Management for NPR-A lands issues, the Minerals Management Service for outer continental shelf oil and gas lease sales, and the National Marine Fisheries Service for commercial fishing regulations.

The Service will initiate development of a recovery plan for the Steller's eider promptly upon listing. This recovery plan, prepared in cooperation with the affected agencies and communities, will establish recovery goals and set recovery task priorities. An educational program to gain public support for the protection of Steller's eiders has already been initiated and will be expanded cooperatively with affected communities.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are in 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes that the following actions will not result in a violation of section 9, provided the activities are carried out in accordance with any existing regulations and permit requirements:

(1) Unintentional flushing or disturbing of Steller's eiders on the species' Alaska nesting or wintering grounds.

(2) Federally approved projects that involve activities such as, drilling, discharge of fill material, draining, ditching, or aleration of surface or ground water into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, etc.) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

(3) Hunting endangered and threatened species for subsistence purposes is permissible under the Endangered Species Act under certain circumstances (section 10(e)of the Act, see further discussion below); however, all hunting of Steller's eiders remains prohibited under other provisions of law.

Activities that the Service believes could potentially result in ''take'' of the Alaska breeding population of Steller's eiders include, but are not limited to, the following activities:

(1) Unauthorized trapping, capturing, or collecting of the Alaska breeding population of Steller's eiders. Research activities, where birds are trapped or captured will require a permit under section 10(a)(1)(A) of the Endangered Species Act.

(2) Intentional or accidental shooting or Steller's eiders during the sport hunting season. This take will be addressed in the annual section 7 consultation conducted on the migratory bird sport hunting season. Wanton killing or injury of Steller's eiders is illegal under both the Endangered Species Act, MBTA, and other Federal and State laws.

Other activities not identified in the above two paragraphs will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. Questions regarding any specific activities should be directed to the Field Supervisor of the Service's Fairbanks Field Office (see **ADDRESSES** section).

Section 10(e) of the Act exempts any Indian, Aleut, or Eskimo who is an Alaska Native who resides in Alaska, or any nonnative permanent resident of an Alaska Native village, from prohibitions on taking any endangered or threatened species if such taking is primarily for subsistence purposes. Regulations prohibiting or limiting subsistence harvest may be established pursuant to section 10(e)(4) of the Act if the Secretary determines that such taking materially and negatively affects the threatened or endangered species. The Service is not considering special regulations under section 10(e)(4) of the Act at this time, because all hunting of Steller's eiders is currently restricted under provisions of other Federal and State laws.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of

Management and Budget under Executive Order 12866.

References Cited

A complete list of all the references cited herein, as well as others, is available upon request from the Fairbanks Ecological Services Field Office (see **ADDRESSES** section).

Authors: The primary author of this document is Ted Swem (see **ADDRESSES** section). Lori Quakenbush, U.S. Fish and Wildlife Service, contributed data and editorial assistance. Bill Larned and Rod King, U.S. Fish and Wildlife Service, contributed survey data.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Eider, Steller's	*Polysticta stelleri* ..	U.S.A. (AK), Russia.	U.S.A. (AK breeding population only)	T	616	NA	NA
*	*	*	*	*	*	*	

Dated: March 21, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–15244 Filed 6–10–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD52

Endangered and Threatened Wildlife and Plants; Threatened Status for the Guajón

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the guajón (*Eleutherodactylus cooki*) to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. The guajón is endemic to Puerto Rico and is restricted to the Pandura mountain range in the southeastern part of the island. It is threatened in this area by agricultural, rural, and industrial development and the associated infrastructure. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *E. cooki*.

EFFECTIVE DATE: July 11, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622, and at the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (787/851–7297) or Ms. Gloria Bell at the Atlanta Regional Office address (404/679–7100).

SUPPLEMENTARY INFORMATION:

Background

Eleutherodactylus is the largest vertebrate genus with over 400 described species. Two major centers of species diversity occur: northwestern South America and the West Indies. Almost all species share two characteristics—''T-shaped'' terminal phalanges, probably an adaptation for climbing, and direct development, allowing for reproduction away from water. In the West Indies, *Eleutherodactylus* species are a dominant amphibian group. No single species is naturally found on more than one of the four Greater Antilles, and most are restricted to small areas within an island (Hedges 1989). Seventeen species of this genus are known from Puerto Rico and, collectively, they are commonly known as ''coquís'' (Rivero 1978, Moreno 1991).

The guajón (*Eleutherodactylus cooki*), also known commonly as ''demon of Puerto Rico'' or ''demonio de Puerto Rico,'' is a relatively large frog, approximately 8.5 centimeters (3.3 inches) in length. It is solid brown in color, although attending and calling males may have a yellow throat. The guajón may be the only species of *Eleutherodactylus* in Puerto Rico that exhibits sexual dimorphism in color (Joglar *et al.* 1996). In both sexes, the frogs have large, white-rimmed eyes, giving the species a specter or phantom-like appearance. The species is characterized by having large truncate discs and by a peculiar, melodious and low voice which is completely different from any other species of *Eleutherodactylus* in Puerto Rico (Rivero 1978). Rivero (1978) states that its peculiar calling and phantom-like appearance made many local people fearful of the species, believing that the mere sight of an animal would be fatal.

The guajón, first collected by Chapman Grant in 1932, is known only from the Pandura range in southeastern Puerto Rico and west to Patillas/San Lorenzo where it lives in crevices and grottoes in and among boulders (Joglar *et al.* 1996). Such grottoes are commonly referred to as guajonales. It is from the grottoes or guajonales where the species lives that the frog derives its name, the guajón. The species is

apparently limited in distribution by the rock formation where it occurs (Rivero 1978, Joglar 1992). Joglar *et al.* (1996) documented population fluctuations, apparently related to precipitation and temperature. Numbers are lowest during the winter months, during the period of least rainfall and lowest temperatures. The number of egg clutches and juveniles was observed to be greatest during the months of October and September. Eggs are laid on the humid faces of boulders in protected microhabitats within the grottoes and up to 59 eggs, which may actually be multiple clutches, are apparently guarded by the males (Rivero 1978, Joglar *et al.* 1996). Diurnal activity of *E. cooki* occurs only inside the caves. Many guajones, however, have been observed leaving the caves at dusk, presumably to forage and rehydrate, and returning before dawn (Joglar *et al.* 1996).

During surveys conducted by Drewry (1986), Joglar (1992), and Joglar *et al.* (1996), the guajón was found at its historical localities, all of which occur within the municipalities of Yabucoa and San Lorenzo. Dr. Fernando Bird (pers. comm.) also reports the species from the municipalities of Las Piedras and Humacao. Little historical data is available on abundance; therefore, reductions in populations are difficult to document. Nevertheless, *E. cooki* is endemic to Puerto Rico and is extremely restricted in geographical distribution. Further, it is a habitat specialist (i.e., requires a particular habitat type) and occurs only on privately-owned lands. Threats to the species include deforestation and earth movement for agricultural activities and rural development, road construction, including the construction of a major four-lane highway, and the construction of a reservoir.

Previous Federal Action

In the Service's notices of review for vertebrate candidates published in the **Federal Register** of December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), January 6, 1989 (55 FR 17475) and November 21, 1991 (56 FR 58804), *Eleutherodactylus cooki* was included as a category 2 species. At that time, Category 2 species were those that were being considered for possible addition to the Federal List of Endangered and Threatened Wildlife, but insufficient data on biological vulnerability and threat were not currently available to support such an action. Designation of Category 2 species was discontinued in the December 5, 1996, **Federal Register** notice (61 FR 64481).

During a symposium/workshop on Puerto Rican reptiles and amphibians held in Puerto Rico in April of 1990, Moreno (1991) believed that the guajón was declining and in urgent need of a status survey. Status surveys conducted in 1991 and 1992 indicated that the guajón is extremely restricted in distribution and currently faces significant threats (Joglar 1992). Joglar *et al.* (1996) recommended that, although studies of 2 specific areas conducted between 1991 and 1994 did not indicate that those particular populations were declining, protecting the species was essential due to its limited distribution and rapid development of its habitat. The Service elevated this species to a candidate and proposed it for threatened status on October 2, 1995 (60 FR 51432). Because additional information became available concerning the species' distribution and biology, the Service reopened the comment period on October 4, 1996 (61 FR 51878).

The processing of this final rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This rule falls under Tier 2. Presently, there are no pending Tier 1 actions in Region 4. In the development of this final rule, the Service has conducted an internal review of all available information on the species and its habitat.

Summary of Comments and Recommendations

In the October 2, 1995, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were requested to comment. A newspaper notice inviting general public comment was published in *The San Juan Star* on October 31, 1995, and in the *El Nuevo Día* on October 25, 1995. The Service also solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to distribution, abundance, status and biological and ecological information for the guajón. In response to the proposed rule, four comment letters were received, three of which were from specialists. One specialist provided additional distributional data on the species, increasing its known range to include the municipalities of Las Piedras and Humacao in southeastern Puerto Rico and agreed that the species' habitat is threatened by human related activity. A second specialist stated that the range of the guajón is limited and that any significant alteration of its habitat might have an effect on its existence. Comments supplying supplemental data have been incorporated into the Background section of this rule, as appropriate. A public hearing was neither requested nor held.

On October 4, 1996, the Service reopened the comment period. The Service again solicited the expert opinions of three appropriate and independent specialists. In response to the proposed rule, five comment letters were received, three of which were from specialists. The Natural Resource Conservation Service, U.S. Department of Agriculture, stated that the listing of the guajón was important and expressed interest in coordinating with the Fish and Wildlife Service in order to identify agricultural land where the species occurs.

The following is a summary of other comments and concerns (referred to as ''Issues'' for the purposes of this summary) regarding the proposed rule that were expressed in writing. Comments of similar content have been grouped together.

Issue 1: Two commenters indicated that without the designation of critical habitat the listing of the species would not be beneficial.

Response: The Service believes that, because the guajón occupies an extremely restricted geographic area in Puerto Rico, protection of its habitat can be accomplished through the Section 7 jeopardy standard and through Section 9 prohibitions against take. Harm in the definition of ''take'' in the Act (50 CFR 17.3) means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by impairing essential behavioral patterns, including breeding, feeding or sheltering. This issue is also addressed in the ''Critical Habitat'' section of this rule.

Issue 2: Two commenters recommended that the species remain a candidate for its protection until an ongoing study of the guajón's reproductive biology is completed.

Response: Candidate species receive no statutory protection under the Act. Thus, having it remain a candidate would not provide the maximum conservation benefit to the guajón. The Act requires the Service to make a listing determination based upon the best scientific and commercial data available. The Service believes that sufficient information on status and threats is available to warrant listing the species as threatened. Information derived from the ongoing study of reproductive biology will be valuable for recovery purposes and will be incorporated into the recovery plan.

Issue 3: A commenter indicated that while scientific collection had not adversely affected the species, other human-related factors do affect the guajón. Another commenter indicated that collecting by artisans was probably not a threat due to the difficulty and the danger of entering the caves, but stated that scientific collecting should be regulated.

Response: The rule states that collection has been identified as a problem by scientists for *other* species of *Eleutherodactylus*; therefore, it should be considered as a potential threat for the guajón. This issue is addressed in the ''Summary of Factors Affecting the Species'' section is this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the guajón should be classified as a threatened species. Procedures found at Section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the guajón (*Eleutherodactylus cooki*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The guajón is only known from the municipalities of Yabucoa, San Lorenzo, Humacao, and Las Piedras in the Pandura range in the extreme southeastern corner of Puerto Rico. Deforestation and earth movement for agricultural and rural development have encroached upon known habitat of the species. Deforestation may result in increased flash flooding, resulting in the drowning of adults and the destruction of nests. The practice of planting crops right up to the entrance of the guajonales may eliminate nocturnal habitat of the species and increase the pesticide and fertilizer run-off into the water flowing under the caves. Caves are also often used as garbage dumps. Road construction and the associated cut and fill has eliminated habitat (Drewry 1986). A major four-line highway is currently proposed through the area, as is the construction of a major reservoir.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although not previously identified as a determinant factor in the decline of the guajón specifically, scientific collecting of related species of coquí in Puerto Rico may have contributed to declines. In a survey of only seven museums in both Puerto Rico and the United States, numerous specimens of the web-footed coquí (*E. karlschmidti*) and the mottled coquí (*E. eneidae*) were located, with a total of 473 preserved individuals of the former and 325 of the latter species (Joglar 1992). Both of these related species' status are under evaluation by the Service because of their extreme rarity. Collection of other *Eleutherodactylus* sp. for use in local art has also been documented, and this activity is currently being evaluated by the Commonwealth government for possible regulation.

C. Disease or Predation

Disease has not been documented as a factor in the decline of this species. However, examination of both preserved and live specimens of the guajón revealed that the species is parasitized by the tick *Ornithodoros talaje*. Nevertheless, the effect of this parasite on the guajón has yet to be studied (Joglar 1992, Joglar *et al.* 1996). Introduced species such as cats, rats, and mongoose, active at night, may adversely affect densities of this species by feeding on the frogs and their eggs.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, the guajón is not yet on the Commonwealth list. Federal listing would provide immediate protection under the Act, and by virtue of an existing section 6 Cooperative Agreement with the Commonwealth, will also assure the addition of this species to the Commonwealth list and enhance its protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The decline in populations of amphibians has become apparent globally. Factors which may be responsible for the decline of amphibians include habitat destruction and modification, acid rain, pesticide contamination, introduction of non-native predators and competitors, agriculture, mining and logging, increased levels of ultraviolet radiation, collection, and global climatic change (Wake and Morowitz 1991, Joglar and Burrowes 1996).

Flash floods, droughts, and catastrophic storms, such as Hurricane Hugo which occurred in 1989, may have caused localized extirpations of other species of *Eleutherodactylus* in specific areas in Puerto Rico (Burrowes and Joglar 1991, Joglar 1992, Joglar and Burrowes 1996). Hurricane Hugo negatively affected the abundance of *E. portoricensis*, a species which is not abundant and is restricted in distribution (Joglar and Burrowes 1991). The guajón is endemic to Puerto Rico, a habitat specialist, and extremely restricted in distribution. It is known only from the southeastern part of the island.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Eleutherodactylus cooki* as threatened, because the species is extremely restricted in distribution and is specialized in habitat utilization. Activities such as dam and road construction and land conversion to agriculture threaten to significantly reduce available habitat. While not in immediate danger of extinction, the guajón is likely to become an endangered species in the foreseeable future if present threats continue. The reasons for not designating critical habitat for this species are discussed below in the ''Critical Habitat'' section.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon

a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that the designation of critical habitat is not prudent for the guajón. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

While collection has not been documented as contributing to the decline of the guajón specifically, large numbers of other *Eleutherodactylus* species, including several identified as species at risk, have been documented in scientific collections. Collection of *Eleutherodactylus* sp. has been documented for use by local artisans, and such collection is currently under evaluation by the Commonwealth government for possible regulation. In addition, due to the appearance of the animal, Rivero (1978) stated that local people were fearful of them. This fear could lead to killing of guajón.

The guajón is rare and restricted in range, and taking for scientific and private collection would pose a serious threat to the species if specific site information were released. The publication of critical habitat maps in the **Federal Register** and local newspapers and other publicity accompanying critical habitat designation would likely increase the collection threat and increase the potential for vandalism if such habitat were designated. The Service believes, therefore, that the identification of critical habitat may increase the threat to the species. The locations of populations of this species have consequently been described only in general terms in the final rule. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies from the Service office described in the **ADDRESSES** section.

Regulations promulgated for implementing Section 7 of the Act provide for both a jeopardy standard, based on listing alone, and for a destruction or adverse modification standard, in cases where critical habitat has been designated. The guajón occupies an extremely restricted geographic area in Puerto Rico and, once listed, the Service believes that protection of guajón habitat can be accomplished through the Section 7 jeopardy standard, and through Section 9 prohibitions against take.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in conservation actions by Federal, Commonwealth, and private agencies, and individuals. The Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions that may require consultation as described in the preceding paragraph include the Army Corps of Engineers and/or National Resource Conservation Service (previously Soil Conservation Service) involvement in the construction of a reservoir; Rural Development (formerly Farmer's Home Administration) funding of water, sewer, and power lines, as well as residential developments; and the Federal Highway Administration's involvement in the construction of small roads and a major highway through the area.

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/679–7313).

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of listing on proposed or ongoing activities. The only known populations of guajón are located on privately-owned land. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession of legally acquired guajón, under Service-approved permitted conditions; and

(2) Federally funded or regulated projects that involve activities, such as dam and road construction, earth movement for agricultural activities and rural development, or diversion or alteration of surface or ground water

flow into or out of grottoes (*e.g.*, due to roads, impoundments, discharge pipes, storm water detention basins, etc.), when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

Activities that the Service believes could potentially result in ''take'' of the guajón, include, but are not limited to:

(1) Unauthorized collecting or capture of the species;

(2) Purposeful introduction of exotic species, such as cats, rats, and mongoose, that may adversely affect densities of this species by feeding on adults or eggs;

(3) Unauthorized destruction/alteration of the species' habitat (e.g., rock removal, discharge of fill materials, earth movement for agricultural activities and rural development, or diversion or alteration of surface or ground water flow into or out of grottoes) when such activity is not conducted in accordance with section 7 of the Act;

(4) Pesticide applications in violation of label restrictions; and

(5) Discharges or dumping of toxic chemicals, silt, or other pollutants into areas supporting this species.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Boquerón Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services, 1875 Century Boulevard, Atlanta, Georgia 30345–3301 (404/679–7313).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

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Author

The primary author of this final rule is Ms. Susan Silander, Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

Part 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Amphibians							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Guajón	Eleutherodactylus cooki.	U.S.A. (PR)	NA	T	617	NA	NA
*	*	*	*	*	*		*

Dated: May 16, 1997.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–15300 Filed 6–10–97; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 62, No. 112
Wednesday, June 11, 1997

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 581 and 582

RIN 3206–AH43

Processing Garnishment Orders for Child Support and Alimony and Commercial Garnishment of Federal Employees' Pay

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend the rules for processing garnishment orders for child support and alimony and the rules for processing commercial garnishment orders. The majority of the amendments to the child support and alimony garnishment regulations (''support regulations'') are mandated by the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

In addition, OPM proposes to amend both the support regulations and the commercial garnishment regulations to provide that while the Federal Government's sovereign immunity has been waived to allow for processing garnishment orders, this waiver necessarily limited and that the Federal Government is not liable to pay money damages for failure to comply with legal process.

DATES: Comments should be received by August 11, 1997.

ADDRESSES: Send or deliver comments to Lorraine Lewis, General Counsel, Office of Personnel Management, Room 7355, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Senior Attorney, Office of the General Counsel, (202) 606–1701.

SUPPLEMENTARY INFORMATION: In accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, enacted on August 22, 1996, OPM proposes to revise the definition of ''child support'' to permit the garnishment of attorney fees relating to the garnishment action. OPM also proposes to include three more types of Federal payments, that will be subject to garnishment: pension payments disbursed by the Department of Veterans Affairs; compensation for death payments; and ''black lung'' benefits payable under any Federal program.

While not expressly mandated by Public Law 104–193, OPM believes that it was the intent of Congress in enacting this law, that awards for making suggestions as authorized by 5 U.S.C. 4503 be subject to support garnishment. OPM is, therefore, proposing to delete the exception for suggestion awards in section 581.104(j). These awards remain exempt from commercial garnishment orders.

OPM proposes amendments to clarify section 581.105 concerning the precedence of tax levies and section 581.402 concerning the applicability of the maximum limitation of the Consumer Credit Protection Act, 15 U.S.C. 1673, in the unusual situation where an employee-obligor receives remuneration from more than one governmental entity.

In compliance with the National Defense Authorization Act (NDAA) for Fiscal Year 1996, Public Law 104–106, enacted on February 10, 1996, OPM proposes to amend section 582.305(k) to require employing agencies to deduct the agency's administrative costs incurred in complying with commercial garnishment orders. In accordance with the intent of Congress as evidenced by the applicable legislative history of the NDAA, the creditor will be required to pay these costs.

As requested by the Department of Justice, OPM is also proposing to amend section 582.305(c) where an appeal of a commercial garnishment action is filed and to amend section 582.305(g) in response to an issue raised in a recent judicial decision, *First Virginia Bank* v. *Randolph*, 920 F.Supp. 213 (D.D.C. 1996), *rev'd*, No. 96–5205 (D.C. Cir. April 11, 1997). Section 582.305(g) currently provides that where an employing agency initially determines that legal process should not be honored, if it subsequently determines that the initial determination was erroneous, the agency may correct its initial determination and honor the legal process. The district court indicated that the current section 582.305(g) supported the court's holding that Congress had waived the Federal Government's immunity in instances where an employing agency failed to comply with a commercial garnishment order. OPM's regulations are neither intended, nor may they be properly constructed, as support for the conclusion that Congress has waived the Federal Government's sovereign immunity in a manner that would make the Federal Government liable for damages as a result of a failure to comply with legal process. The proposed amendment to section 582.305(g) would delete both that portion of the paragraph that discusses an agency's authority to correct an error and the conclusion that under no circumstances will an agency be required to pay more than if it had originally honored the legal process, as this provision may be mistakenly construed as acknowledging Government liability and a concomitant waiver of sovereign immunity.

OPM also proposed, in accordance with a request from the Justice Department, to amend section 581.305(e) to state the Government's similar absence of liability in the context of improperly effectuated support garnishment orders. It is the Federal Government's position that the support garnishment statute did not waive sovereign immunity in a manner that would make the Federal Government liable for damages as a result of failure to comply with legal process. This amendment to the support garnishment regulations alters regulatory language that has been in effect since 1980. The current regulatory language is incorrect as a matter of law. This amendment is in accordance with several important judicial decisions concerning sovereign immunity, including the decision recently announced by the United States Court of Appeals for the District of Columbia Circuit in *Department of the Army* v. *Federal Labor Relations Authority*, 56 F.3d 273 (1995).

In accordance with the Minimum Wage Increase Act of 1996, section 2104 of Public Law 104–188, OPM is amending section 582.402. Effective October 1, 1996, section 2104 set the minimum hourly wage at $4.75, and

effective September 1, 1997, the minimum hourly wage will be $5.15.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited to Federal employees and their creditors.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 581 and 582

Alimony, Child support, Claims, Government employees, and Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is proposing to amend parts 581 and 582 of Title 5, Code of Federal Regulations, as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND ALIMONY

1. The authority citation for part 581 is revised as follows:

Authority: 42 U.S.C. 659; 15 U.S.C. 1673; E.O. 12105 43 FR 59465 and 3 CFR, 1979 Comp., p. 262.

2. Section 581.101 is revised to read as follows:

§ 581.101 Purpose.

(a) Notwithstanding any other provision of law (including section 407 of title 42, United States Code, section 5301 of title 38, United States Code, and sections 8346 and 8470 of title 5, United States Code), section 659 of title 42, United States Code, as amended, provides that moneys, the entitlement to which is based upon remuneration for employment, due from, or payable by, the United States or the District of Columbia to any individual, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person:

(1) To legal process for the enforcement of an obligor's legal obligations to provide child support, alimony, or both, resulting from an action brought by an individual obligee; and

(2) To withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of title 42, United States Code, and to regulations of the Secretary of Health and Human Services under such subsections, and to any other legal process brought by a State agency subject to regulations of the Secretary of Health and Human Services that is administering a program under an approved State plan to enforce the legal obligations of obligors to provide child support and alimony.

(b) Section 659 of title 42, United States Code, as amended, provides further that each governmental entity shall be subject to the same requirements as would apply if the governmental entity were a private person, except as set forth in this part.

3. In § 581.102, paragraphs (d) and (f) are revised and paragraph (k) is added to read as follows:

§ 581.102 Definitions.

* * * * *

(d) *Child support* means the amounts required to be paid for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, who provides for monetary support, health care, arrearages or reimbursement, and which may include other related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief.

* * * * *

(f) *Legal process* means any writ, order, summons, notice to withhold income pursuant to subsection (a)(1) or (b) of section 666 of title 42, United States Code, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, or court ordered wage assignment, which—

(1) Is issued by:

(i) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia;

(ii) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or

(iii) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; or

(iv) A State agency authorized to issue income withholding notices pursuant to State or local law or pursuant to the requirements of section 666(b) to title 42 of the United States Code; and

(2) Is directed to, and the purpose of which is to compel, a governmental entity, to make a payment from moneys otherwise payable to an individual, to another party to satisfy a legal obligation of the individual to provide child support, alimony, or both

* * * * *

(k) *Individual obligee* means any individual or entity other than a State agency authorized to issue income withholding notices pursuant to the requirements of section 666(b) to title 42 of the United States Code.

4. In § 581.103, paragraph (c) is revised to read as follows:

§ 581.103 Moneys which are subject to garnishment.

* * * * *

(c) For obligors generally:

(1) Periodic benefits, including a periodic benefit as defined in section 429(h)(3) of title 42 of the United States Code, title II of the Social Security Act, to include a benefit payable in a lump sum if it is commutation of, or a substitute for, periodic payments; or other payments to these individuals under the programs established by subchapter II of chapter 7 of title 42 of the United States Code (Social Security Act); pension payments made by the Department of Veterans Affairs; and payments under chapter 9 of title 45 of the United States Code (Railroad Retirement Act) or any other system, plan, or fund established by the United States (as defined in section 662(a) of title 42 of the United States Code) which provides for the payment of:

(i) Pensions;

(ii) Retirement benefits;

(iii) Retired/retainer pay;

(iv) Annuities; and

(v) Dependents' or survivors' benefits when payable to the obligor;

(2) Refunds of retirement contributions where an application has been filed;

(3) Employee contributions and Government contributions to the obligor's Thrift Savings Fund account in accordance with section 8437(e) of title 5 of the United States Code;

(4) Amounts received under any Federal program for compensation for work injuries; and

(5) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act.

(6) Compensation for death under any Federal program, including death gratuities authorized under 5 U.S.C. 8133(f); 5 U.S.C. 8134(a); Public Law 103–332, section 312; and Public Law 104–208, section 651.

(7) Any payment under any Federal program established to provide ''black lung'' benefits;

(8) Any payment by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the

Armed Forces who is in receipt of retired or retainer pay if the former member has waived either the entire amount or a portion of the retired or retainer pay in order to receive such compensation. In such cases, only that part of the Department of Veterans Affairs payment that is in lieu of the waived retired pay or waived retainer pay is subject to garnishment.

§ 581.104 [Amended]

5. In § 581.104, paragraph (j) is removed and paragraph (k) is redesignated as paragraph (j).

6. In § 581.105, paragraph (a) is revised to read as follows:

§ 581.105 Exclusions.

* * * * *

(a) Are owed by the individual to the United States, except that an indebtedness based on a levy for income tax under section 6331 of title 26 of the United States Code, shall not be excluded in complying with legal process for the support of minor children if the legal process was entered prior to the date of the levy;

* * * * *

7. In § 581.202, paragraphs (a) and (b) are revised to read as follows:

§ 581.202 Service of process.

(a) A party using this part shall serve legal process on the agent designated in appendix A to this part, or if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of that governmental entity, which has moneys due and payable to the obligor. Where the legal process is directed to, and the purpose of the legal process is to compel a governmental entity which holds moneys which are otherwise payable to an individual, to make a payment from such moneys in order to satisfy a legal obligation of such individual to provide child support or make alimony payments, the legal process need not expressly name the governmental entity as a garnishee.

(b) Service shall be accomplished pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666 of title 42 of the United States Code. The designated agent shall note the date and time of receipt on the legal process. The governmental entity shall make every reasonable effort to facilitate proper service of process on its designated agent(s). If legal process is not directed to any particular official within the entity, or if it is addressed to the wrong individual, the recipient shall, nonetheless, forward the legal process to the designated agent. However, valid service is not accomplished until the legal process is received in the office of the designated agent.

* * * * *

8. In § 581.303, paragraph (a) is revised to read as follows:

§ 581.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is validly served with legal process pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666 of title 42, United States Code, within 30 calendar days, or within such longer period as may be prescribed by applicable State law, the agent shall comply with all applicable provisions of section 666, including as follows:

(1) If an agent is served with notice concerning amounts owed by an obligor to more than one person, the agent shall comply with section 666(b)(7);

(2) Allocation of moneys due and payable to an individual under section 666(b) shall be governed by section 666(b) and the regulations prescribed under such section by the Secretary of Health and Human Services;

(3) Such moneys as remain after compliance with paragraphs (a)(1) and (a)(2) of this section shall be available to satisfy any other such legal process on a first-come, first-served basis, with any such legal process being satisfied out of such moneys as remain after the satisfaction of all such legal process which have been previously served.

(4) The agent shall also respond within 30 days to interrogatories which accompany legal process.

* * * * *

9. In § 581.305, paragraphs (d) and (e) are revised to read as follows:

§ 581.305 Honoring legal process.

* * * * *

(d) If a governmental entity is served with more than one legal process for the same moneys due or payable to an individual, the entity shall comply with § 581.303(a). *Provided*, That in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in § 581.402.

(e)(1) Neither the United States, any disbursing officer, nor any governmental entity shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part.

(2) Neither the United States, any disbursing officer, nor any governmental entity shall be liable under this part to pay money damages for failure to comply with legal process.

* * * * *

10. In subpart D, § 581.402 is revised to read as follows:

§ 581.402 Maximum garnishment limitations.

(a) Except as provided in paragraph (b) of this section, pursuant to section 1673(b)(2) (A) and (B) of title 15 of the United States Code (the Consumer Credit Protection Act, as amended), unless a lower maximum garnishment limitation is provided by applicable State or local law, the maximum part of the aggregate disposable earnings subject to garnishment to enforce any support order(s) shall not exceed:

(1) Fifty percent of the obligor's aggregate disposable earnings for any workweek, where the obligor asserts by affidavit, or by other acceptable evidence, that he or she is supporting a spouse, a dependent child, or both, other than the former spouse, child, or both, for whose support such order is issued, except that an additional five percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for a period which is 12 weeks prior to that workweek. An obligor shall be considered to be supporting a spouse, dependent child, or both, only if the obligor provides over half of the support for a spouse, dependent child or both.

(2) Sixty percent of the obligor's aggregate disposable earnings for any workweek, where the obligor fails to assert by affidavit or establishes by other acceptable evidence, that he or she is supporting a spouse, dependent child, or both, other than a former spouse, child, or both, with respect to whose support such order is issued, except that an additional five percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for period which is 12 weeks prior to that workweek.

(3) Where, under § 581.302(a)(2), an obligor submits evidence that he or she is supporting a second spouse, child, or both a second spouse and dependent child, copies of the evidence shall be sent by the governmental entity to the garnishor, or the garnishor's representative, as well as the court, or other authority as specified in § 581.102(f)(1), together with notification that the obligor's support claim will be honored. If the garnishor disagrees with the obligor's support

claim, the garnishor should immediately refer the matter to the court, or other authority, for resolution.

(b) In instances where an obligor is receiving remuneration from more than one governmental entity, an authority described in § 581.102(f)(1) may apply the limitations described in paragraph (a) of this section to the total remuneration, i.e., to the combined aggregate disposable earnings received by the obligor.

PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES' PAY

11. The authority citation for part 582 is revised as follows:

Authority: 5 U.S.C. 5520a; 15 U.S.C. 1673; Pub. L. 104–106, section 643; E.O. 12897, 3 CFR, 1995 Comp., p. 858.

12. In § 582.305, paragraphs (c), (g), and (k) are revised to read as follows:

§ 582.305 Honoring legal process.

* * * * *

(c) (1) The filing of an appeal by an employee-obligor will not generally delay the processing of a garnishment action. If the employee-obligor establishes to the satisfaction of the employee-obligor's agency that the law of the jurisdiction which issued the legal process provides that the processing of the garnishment action shall be suspended during an appeal, and if the employee-obligor establishes that he or she has filed an appeal, the employing agency shall comply with the applicable law of the jurisdiction and delay or suspend the processing of the garnishment action.

(2) Notwithstanding paragraph (c)(1) of this section, the employing agency shall not be required to establish an escrow account to comply with legal process even if the applicable law of the jurisdiction requires private employers to do so.

* * * * *

(g) (1) Neither the United States, an executive agency, nor any disbursing officer shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part.

(2) Neither the United States, an executive agency, nor any disbursing officer shall be liable under this part to pay money damages for failure to comply with legal process.

* * * * *

(k) The agency's administrative costs incurred in executing a garnishment shall be paid by the creditor. The amount garnished, including the amount deducted as a administrative costs, may not exceed the limitations in § 582.401

[Example to paragraph (k): Where the employee-obligor's aggregate disposable earnings are $1,000; the commercial garnishment is at the 25% maximum percentage; and the cost of processing the commercial garnishment order is $25 per garnishment action: $225 would be remitted in compliance with the order and $25 would be deducted as the administrative cost for a deduction total of $250. However, while only $225 would be remitted, the agency would reduce the balance due as if $250 had been remitted.]

* * * * *

13. In § 582.402, paragraph (a) is revised to read as follows:

§ 582.402 Maximum garnishment limitations.

* * * * *

(a) Unless a lower maximum limitation is provided by applicable State or local law, the maximum part of an employee-obligor's aggregate disposable earnings subject to garnishment to enforce any legal debt other than an order for child support or alimony, including any amounts withheld to offset administrative costs as provided for in § 582.305(k), shall not exceed 25 percent of the employee-obligor's aggregate disposable earnings for any workweek. As appropriate, State or local law should be construed as providing a lower maximum limitation where legal process may only be processed on a one at a time basis. Where an agency is garnishing 25 percent or more of an employee-obligor's aggregate disposable earnings for any workweek in compliance with legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act, no additional amount may be garnished in compliance with legal process under this part. Furthermore, the following dollar limitations, which are contained in title 29 of the Code of Federal Regulations, part 870, must be applied in determining the garnishable amount of the employee's aggregate disposable earnings:

(1) If the employee-obligor's aggregate disposable earnings for the workweek are in excess of 40 times the Fair Labor Standard Act (FLSA) minimum hourly wage, 25 percent of the employee-obligor's aggregate disposable earnings may be garnished. For example, effective September 1, 1997, when the FLSA minimum wage rate is $5.15 per hour, this rate multiplied by 40 equals $206.00 and thus, if an employee-obligor's aggregate disposable earnings are in excess of $206.00 for a workweek, 25 percent of the employee-obligor's aggregate disposable earnings are subject to garnishment.

(2) If the employee-obligor's aggregate disposable earnings for a workweek are less than 40 times the FLSA minimum hourly wage, garnishment may not exceed the amount by which the employee-obligor's aggregate disposable earnings exceed 30 times the current minimum wage rate. For example, at an FLSA minimum wage rate of $5.15 per hour, the amount of aggregate disposable earnings which may not be garnished is $154.50 [$5.15 x 30]. Only the amount above $154.50 is garnishable.

(3) If the employee-obligor's aggregate disposable earnings in a workweek are equal to or less than 30 times the FLSA minimum hourly wage, the employee-obligor's earnings may not be garnished in any amount.

* * * * *

[FR Doc. 97–15182 Filed 6–10–97; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–58–AD]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft Incorporated Models SA226–TC, SA226–T, SA226–T(B), and SA226–AT Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Fairchild Aircraft Incorporated (Fairchild) Models SA226–TC, SA226–T, SA226–T(B), and SA226–AT airplanes. The proposed AD would require inspecting the center flap hinge and wing trailing edge ribs at the flap actuator attach brackets for cracks and if no cracks are found, installing a doubler on the rib, or replacing a cracked rib with a new rib assembly that is reinforced with a doubler. Fatigue cracks at the center flap hinge and the support link has resulted in concentrated stress on the wing trailing edge ribs which prompted the proposed action. The actions specified by the proposed AD are intended to prevent asymmetrical flap deflection forcing the airplane into an uncommanded roll and

could cause loss of control of the airplane.

DATES: Comments must be received on or before August 11, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–58–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft Inc., P.O. Box 32486, San Antonio, Texas, 78284; telephone (210) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

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 that summarizes 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 No. 96–CE–58–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–58–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Events Leading to the Proposed AD

The FAA has received reports of three incidents on certain Fairchild SA226 series airplanes with fatigue cracks in the wing trailing edge rib at the center flap hinge. Further investigation shows that the cracking is relieving the stress load at the support link. This prevents the flaps from extending to full deflection, which could result in asymmetrical flap deflection and cause the airplane to go into an uncommanded roll.

Related Service Information

Fairchild has issued Service Bulletin (SB) SB 57–016, *Issued:* June 25, 1981; *Revised:* December 9, 1981, that specifies procedures for inspecting the wing trailing edge ribs for cracks, if no cracks are found, installing reinforcement doublers on the ribs, and replacing ribs that have cracks with new rib assemblies.

(**Note:** The compliance time in this AD takes precedence over the compliance time in the Fairchild Service Bulletin referenced above.)

FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and service information described above, the FAA has determined that AD action should be taken to prevent asymmetrical flap deflection forcing the airplane into an uncommanded roll and could cause loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Models SA226–TC, SA226–T, SA226–T(B), and SA226A–T airplanes of the same type design, the proposed AD would require:

—Inspecting wing trailing edge ribs at wing stations (WS) 98.385 and 100.635 for cracks,

—Replacing any cracked rib with a new rib assembly (part number (P/N) 27–31085–1/2 or 27–31086–1/2 or FAA equivalent), and

—Installing a reinforcement doubler (P/N 27K36075–7 or FAA equivalent), whether or not cracks are found.

Cost Impact

The FAA estimates that 240 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 100 workhours per airplane to accomplish the proposed installation of the doubler and 180 workhours per airplane to accomplish the proposed installation of the new rib assembly and doubler, and that the average labor rate is approximately $60 an hour. Parts cost approximately $133 for both wing rib assemblies per airplane. The doubler can be manufactured from local materials. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,623,920 for the U.S. fleet or $10,933 per airplane for the rib assembly and doubler installations. The labor cost for the doubler installation is $6,000 per airplane and the doubler can be manufactured from local materials.

Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The RFA requires government agencies to determine whether rules would have a ''significant economic impact on a substantial number of small entities,'' and, in cases where the rule would have an economic impact, the agency making the rule is obligated to conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses, small not-for-profit organizations that are independently owned and operated, or airports operated by small governmental jurisdictions. A ''substantial number'' is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a proposed rule, or any number of small entities judged to be substantial by the rulemaking official. A ''significant economic impact'' is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types.

There are an estimated 240 Fairchild SA226 series airplanes in the U.S. registry that could be affected by the proposed action. For many of these airplanes, it is believed that the actions that are proposed have already been completed. The entities affected by the proposed AD are largely grouped in the

Standard Industrial Classification (SIC) 4512, Operators of Aircraft for Hire, classified as ''Unscheduled.'' FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, defines a small entity in this classification as one that owns or operates nine or fewer aircraft.

In order to experience a significant economic impact under Order 2100.14A, an operator of aircraft for hire, unscheduled, would have to incur annualized costs of $4975 (1996 dollars) or more. Costs are estimated to be approximately $6,000 per airplane if only the doubler plates are installed, or as much as $10,933 per airplane if any ribs are found cracked and a rib assembly replacement is required, in addition to installing the doubler plate. Annualized costs are dependent on the required work, the cost of capital for airplane owners/operators, and the expected length of time that the required changes are expected to be in use. Since the changes are assumed to be permanent, the service life of the changes is the remaining life of the airplane. The cost of capital for the airplane owners/operators is assumed to be 15 percent. Under these conditions, no owner/operator of a single airplane would be subject to significant costs if the expected remaining service life of the aircraft were more than:

(a) 1.43 years (approximately 17 months), if the doubler plate installation is required; or

(b) 2.9 years (approximately 35 months) if both the doubler plate installation and rib replacement is required.

Ownership of the new SA226 series airplanes (i.e.: the airplanes other than the older Model SA226TC) is very widely dispersed. There are five separate entities (excluding Swearingen) that show ownership of newer SA226 series airplanes in the U.S. Registry, each of which owns two SA226 series airplanes. According to the manufacturer, these airplanes are relatively new with typically less than 10,000 hours total time-in-service (TIS), and are employed primarily as corporate aircraft with usage rates at approximately 400 hours TIS per year. Allocating a nominal remaining service life of 25,000 hours total TIS (out of a total service life of 35,000 hours) at the rate of 500 hours TIS per year, suggests remaining lives on the order of 50 years. Even with a remaining service life of half of this, or 25 years, annualized costs for both doubler plate installation and rib replacement would be on the order of $1,715. Thus, an owner of two such airplanes would experience annualized costs for the proposed AD of approximately $3,430, which is a figure less than 70 percent of threshold value for significant cost.

The manufacturer indicates that most of the older Fairchild Model SA226–TC airplanes (80 of which were listed in the U.S. Registry records), have probably been modified under the 1981 service bulletin that will be made mandatory by the AD. Fairchild Model SA226–TC airplanes in service have average cumulative usage of approximately 25,000 to 30,000 hours total TIS, with a likely average annual usage in cargo service of 1,000 to 1,500 hours TIS, and an economic life of 35,000 hours total TIS. This suggests that most Fairchild Model SA226–TC airplanes have remaining lives of about five years (even without prospective modifications that are likely to extend the life of the aircraft). A five-year life for an airplane that would be required to carry out both modifications implies that annualized costs would be approximately $3,300. Thus, an owner of a single aging unmodified Fairchild Model SA226–TC airplane would not experience a significant economic impact.

According to U.S. Registry records, there are 12 entities (excluding Sweringen) that own 2 or more Fairchild Model SA226–TC airplanes, accounting for a total of 49 airplanes. Because of the age of the aircraft and the likelihood of compliance with the original service bulletin (dated 1981), the FAA believes that significant impacts will not be felt by most owners of the these airplanes. In addition, the eight owners of two or more of these airplanes account for less than one-tenth of the affected entities. For these reasons, the FAA has determined that the proposed AD would not have a significant economic impact on a substantial number of small aircraft operators. The FAA solicits comments concerning the impact of this proposed AD on small entity owners of affected airplanes. Based on the possibility that this proposed AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis.

A copy of the full Cost Analysis and Regulatory Flexibility Determination for the proposed action may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–58–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

FAA's Aging Commuter Aircraft Policy

This action is consistent with the FAA's aging commuter airplane policy. This policy simply states that reliance on repetitive inspections of critical areas on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. The alternative to installing the doubler or the new rib assembly would be relying on repetitive inspections to detect damaged wing ribs.

Regulatory Impact

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

For the reasons discussed above, I certify that this 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) 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 has been placed 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 USC 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Fairchild Aircraft Inc.: Docket No. 96–CE–58–AD.

Applicability: The following Models and serial numbered airplanes, certificated in any category.

Models	Serial Nos.
SA226–TC	TC201 through TC379.
SA226–T	T201 through T275, and T277 through T291.
SA226–T(B)	T(B)275, and T(B)292 through T(B)378.
SA226–AT	AT001 through AT069.

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 500 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

Note 2: The compliance time of this AD takes precedence over the compliance time in the Fairchild Service Bulletin referenced below.

To prevent asymmetrical flap deflection forcing the airplane into an uncommanded roll and cause loss of control of the airplane, accomplish the following:

(a) Inspect both wing trailing edge ribs at the center flap actuator attach brackets, wing stations (WS) 98.385 and 100.635, for cracks in accordance with the Accomplishment Instructions section, Part A, of Fairchild Service Bulletin (SB) 57–016, Issued: June 25, 1981; Revised: December 9, 1981.

(1) If no cracks are found, prior to further flight, install the reinforcement doubler, part number (P/N) 27K36075–7 or an FAA approved, in accordance with the Accomplishment Instructions section, Part B of Fairchild SB 57–016, Issued: June 25, 1981; Revised: December 9, 1981.

(2) If any cracks are found, prior to further flight, replace any cracked rib with a new rib assembly (P/N 27–31085–1/2 or 27–31086–1/2 or an FAA-approved) and install the new reinforcement doubler (P/N 27K36075–7 or an FAA equivalent) in accordance with the Accomplishment Instructions section, Part B and Part C of Fairchild SB 57–016, Issued: June 25, 1981; Revised: December 9, 1981.

(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 compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Airplane Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Fairchild Aircraft, Inc., P. O. Box 32486, San Antonio, Texas, 78284; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 4, 1997.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–15174 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AAL–8]

Proposed Revision of Class E Airspace; Ketchikan, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal will revise the Class E airspace designated as the surface area for Ketchikan International Airport, Ketchikan, AK. The Ketchikan International Airport's surface area is currently effective 24 hours a day and has a mandatory communication requirement. The wording in the last two sentences in the current description apply to surface areas with less than 24 hour operations. These last two sentences will be deleted. The intended effect of this proposal is to modify the Ketchikan, AK, surface area description to indicate a continuous, 24 hour operation.

DATES: Comments must be received on or before July 28, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 97–AAL–8, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above and on the Internet at the Alaskan Region's homepage at http://www.alaska.faa.gov/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AAL–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace designated as the surface area for Ketchikan International Airport, Ketchikan, AK. The Ketchikan International Airport's surface area is currently effective 24 hours a day and has mandatory communication requirements. The wording in the last two sentences of the current description are for surface areas with less than 24 hour operations. These last two sentences will be deleted. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The intended effect of this proposal is to modify the Ketchikan, AK, surface area description to indicate continuous, 24 hour operation. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Ketchikan, AK

Ketchikan International Airport, Ketchikan, AK
(lat. 55°21′20″ N, long. 131°42′49″ W)
Ketchikan Localizer
(lat. 55°20′ 51″ N, long. 131°42′ 00″ W)

Within a 3-mile radius of the Ketchikan International Airport and within 1 mile each side of the Ketchikan localizer northwest/southeast courses extending from the 3-mile radius to 4.6 miles northwest and 4.1 miles southeast of the airport.

* * * * *

Issued in Anchorage, AK, on June 3, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–15309 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AAL–7]

Proposed Establishment of Class E Airspace; Huslia, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Huslia, AK. The development of Very High Frequency (VHF) omni-directional radio range (VOR) and VOR/Distance Measuring Equipment (DME) instrument approaches to RWY 3 and RWY 21 have made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations, segregating aircraft using instrument conditions from other aircraft operating in visual weather conditions, at Huslia Airport, AK.

DATES: Comments must be received on or before July 28, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 97–AAL–7, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above and on the Internet at the Alaskan Region's homepage at http://www.alaska.faa.gov/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address

listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AAL–7.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace to accommodate aircraft executing the VOR instrument approach procedures at Huslia, AK. Controlled airspace extending upward from 700 to 1200 feet above the ground (AGL) is needed to contain aircraft executing the approach. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The intended effect of this proposal is to provide adequate controlled airspace for IFR operations, segregating aircraft using instrument conditions from other aircraft operating in visual weather conditions, at Huslia Airport, AK. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Huslia, AK

Huslia Airport, AK
(Lat. 65° 41′ 50″ N, long. 156° 23′ 21″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Huslia Airport.

* * * * *

Issued in Anchorage, AK, on June 3, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–15308 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 97N–0199]

General and Plastic Surgery Devices: Reclassification of the Tweezer-Type Epilator

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the tweezer-type epilator from class III to class I when intended to remove hair. FDA also proposes to exempt this device from the premarket notification requirements. This reclassification is being proposed on the Secretary of Health and Human Services' own initiative based on new information. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) and the Safe Medical Devices Act of 1990 (the SMDA).

DATES: Written comments by September 9, 1997. FDA proposes that any final regulation based on this proposal become effective 30 days after date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Stephen P. Rhodes, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The act, as amended by the 1976 amendments (Pub. L. 94–295) and the SMDA (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the

regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as post amendment devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon ''new information.'' The reclassification can be initiated by FDA or by the petition of an interested person. The term ''new information,'' as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of changes in ''medical science.'' (See *Upjohn* v. *Finch*, *supra*, 422 F.2d at 951.) However, regardless of whether data before the agency are past or new data, the ''new information'' on which any reclassification is based is required to consist of ''valid scientific evidence,'' as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA (see section 520(c) of the act (21 U.S.C. 360j(c)).

Section 513(d)(2)(A) of the act authorizes FDA to exempt, by regulation, a generic type of class I device from, among other things, the requirement of premarket notification in section 510(k) of the act after stating the reasons for making such requirement inapplicable. Such exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA. If FDA has concerns about certain types of changes to a particular class I device, the agency may grant a limited exemption from premarket notification for that generic device.

In 1990, the SMDA added section 515(i) to the act. This section of the act requires FDA to issue an order to manufacturers of preamendment class III devices and substantially equivalent postamendments devices for which no final regulation requiring the submission of PMA's has been issued. This order requires such manufacturers to submit to the agency a summary of, and a citation to, any information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information that has not been submitted under section 519 of the act (21 U.S.C. 360i). Section 519 of the act requires manufacturers, importers, distributors, and device user facilities to submit adverse event reports of certain device-related events and reports of certain corrective actions taken. Section 515(i) of the act also directs FDA to either revise the classification of the device into class I or class II or require the device to remain in class III and establish a schedule for the issuance of a rule requiring the submission of PMA's for those devices remaining in class III.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA announced the availability of a document setting forth its strategy for implementing the provisions of SMDA that require FDA to review the classification of preamendments class III. Under this plan, the agency divided preamendment class III devices into the following three groups: Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness, but are no longer used or are in very limited use; Group 2 devices are devices that FDA believes have a high potential for being reclassified; and Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. FDA also announced its intention to call for submission of PMA's for the 15 highest priority devices in Group 3, and for all Group 1 devices. The agency also announced its intention to issue an order under section 515(i) of the act for the remaining Group 3 devices and for all Group 2 devices.

In the **Federal Register** of August 14, 1995 (60 FR 41984 and 41986), FDA published two orders for certain class III devices requiring the submission of safety and effectiveness information in accordance with the Preamendments Class III Strategy document for implementing section 515(i) of the act. The orders describe in detail the format for submitting the type of information required by section 515(i) of the act so that the information submitted would clearly support either reclassification of the device into class I or II or retention of the device in class III. The orders also scheduled the required submissions in groups of nine devices at 6-month intervals beginning with August 14, 1996. The devices proposed in this regulation were included in the August 14, 1995, Docket No. 94N–0417 Order on Group 2 devices.

II. Regulatory History of the Device

In the **Federal Register** of January 19, 1982 (47 FR 2810), FDA published a proposed rule to classify the tweezer-type epilator into class III. The preamble included the classification recommendation of the General and Plastic Surgery Devices Classification Panel (the panel). The panel's recommendation included a summary of the reasons why the device should be subject to premarket approval and identified certain risks to health

presented by the device, including: (1) Cataract formation: Nonionization radiation emitted from the device may cause heating of the lens of the eye leading to cataract formation (opacity of the lens of the eye); (2) pacemaker interference: Patients with pacemakers may experience arrhythmias from the use of the device; and (3) nonionizing radiation exposure: The 27 megahertz (MHz) electromagnetic radiation emitted from the tip of the tweezer may be potentially hazardous to organs other than the eye.

In the **Federal Register** of June 24, 1988 (53 FR 23856), FDA published a final rule classifying the tweezer-type epilator into class III (21 CFR 878.5360).

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA categorized the tweezer-type epilator as a Group 2 device, which FDA believes has a high potential for being reclassified. The agency also announced its intent to issue an order under section 515(i) of the act for Group 2 devices.

In the **Federal Register** of August 14, 1995 (60 FR 41986), FDA published an order requiring manufacturers of tweezer-type epilators to submit safety and effectiveness information in accordance with the Preamendments Class III Strategy document for implementing section 515(i) of the act. Between August 8, 1996, and September 24, 1996, four summaries of safety and effectiveness information were submitted to the agency (Refs. 1 through 4). These summaries recommended that the tweezer-type epilator be reclassified into class I or class II and provided information to assist FDA in reclassifying the device.

III. Device Description

FDA is proposing the following device description based on the agency's review: The tweezer-type epilator is a device intended to remove hair by destroying the dermal papilla of a hair. The energy provided at the tip of the tweezer used to remove hair may be radio frequency, galvanic (direct current), or a combination of radio frequency and galvanic energy. This new device description reflects the entire array of energy sources of tweezer-type epilators on the market.

IV. Proposed Reclassification

FDA is proposing that the tweezer-type epilator intended to remove hair should be reclassified from class III to class I. FDA believes that class I would provide a reasonable assurance of safety and effectiveness of the device for its intended use. FDA is also proposing that the device be exempt from premarket notification requirements.

V. Risks to Health

When the tweezer-type epilator was proposed for classification into class III in 1982, the panel identified certain risks to health that they believed use of the device presented. The risks to health identified were: (1) Cataract formation: Nonionization radiation emitted from the device may cause heating of the lens of the eye leading to cataract formation (opacity of the lens of the eye); (2) pacemaker interference: Patients with pacemakers may experience arrhythmias from the use of the device; and (3) nonionizing radiation exposure: The 27 MHz electromagnetic radiation emitted from the tip of the tweezer may be potentially hazardous (47 FR 2810). No other risks to health were identified by FDA when the device was classified into class III in 1988 (53 FR 23856).

One of the 515(i) submissions identified an additional potential risk to health, burning of the skin, associated with the use of electronic tweezer-type epilators (Ref. 2). If the tweezers touch the skin accidentally during the procedure, the skin is instantly burned and the burned tissue is pulled away on the tip of the tweezer. Another 515(i) submission stated that heat buildup during the use of galvanic tweezer-type epilators could potentially result in smoking, sizzling, and even a mild shock (Ref. 3).

VI. Summary of the Reasons for the Reclassification

In accordance with section 513(e) of the act and 21 CFR 860.130, based on new information with respect to the device, FDA, on its own initiative, is proposing to reclassify the tweezer-type epilator from class III to class I when intended to remove hair because general controls would provide reasonable assurance of safety and effectiveness. FDA is also proposing to exempt the device from premarket notification procedures because: (1) There is no history of significant risks to health; (2) the characteristics of the device necessary for safety and effectiveness are established; (3) any anticipated changes that could affect safety and effectiveness of the device could be readily detected and will not likely result in a change of classification of the device; and (4) there is no significant history of false and misleading claims associated with the use of the device.

Another reason for proposing reclassification of the tweezer-type epilator into class I is that the needle epilator also intended to remove hair by destroying the dermal papilla of hair was reclassified from class II into class I and exempted from premarket notification procedures in 1996 (61 FR 44013, August 27, 1996). FDA believes proposing reclassification of the tweezer-type epilator into class I provides consistency in the classification of the device.

VII. Summary of Data Upon Which the Reclassification is Based

A. Previously Identified Risks to Health

No reports of cataract formation, pacemaker interference, or any other adverse nonionizing radiation exposure effects associated with the use of the tweezer-type epilator were found in the literature, in FDA's voluntary Device Experience Network (DEN) and Mandatory Device Reporting (MDR) data bases, or in the 515(i) submissions (Refs. 1 through 4).

One of the 515(i) submissions (Ref. 4) did address the possible risks to health of cataract formation and pacemaker interference. This submitter had its device tested for radio frequency and microwave radiation emission. There was no detectable emission from the device in the 10–300 MHz range. Radio frequency tweezer-type epilators utilize 13.56, 27.12 or 40.68 MHz to remove hair. Thus, the probability of the use of radio frequency tweezer-type epilators leading to cataract formation and causing pacemaker interference is low during the proper use of the device.

B. Burning of the Skin and Electrical Shock

Although one 515(i) submission identified burning of the skin as a potential risk to health (Ref. 2) and another 515(i) submission identified electrical shock as another potential risk to health (Ref. 3), no reports of burning of the skin or electrical shock associated with use of the device were found in the literature or in the agency's DEN or MDR data bases.

C. Adverse Experience Reports

The DEN data base included some reports of lack of clinical effectiveness and misleading claims of permanent hair removal associated with use of the device. There also was one report of pain, infection, and inadequate directions; one report of scarring; and two reports of ingrown/infected hairs. There were no reports of these or any other adverse effects associated with the use of the device found in the MDR data base. There also were no reports of adverse effects in the records of the Consumer Product Safety Commission.

Based on the new information submitted to it, and the agency's own review of the literature and its DEN and MDR data bases, FDA has concluded

that the risks to health identified when the device was classified into class III and the new potential identified risks to health do not appear to be risks to health when the device is used properly. FDA now believes that general controls are sufficient to reasonably ensure that the device is safe and effective for its intended use. FDA also believes that the device should be exempted from the premarket notification procedures because agency review of premarket notification submissions will not increase the safety and effectiveness of the device.

D. Benefits of the Device

The psychological stress of embarrassingly excessive hair growth is well documented, and the elimination of unwanted hair through destruction of the papilla of the hair follicle is fairly well characterized (Refs. 5 through 9). FDA has concluded from the literature and its knowledge of the device that the tweezer-type epilator can remove hair and that the performance parameters of the device in regards to safety are also well documented and understood. The device has had a reasonable record of safety for over 20 years of use.

There is little published information in regards to the claims of hair removal by tweezer-type epilators and only one published clinical study (Ref. 8) specifically investigating the use of tweezer-type epilators. In this study, eight subjects were treated with a tweezer-type epilator. The same area of skin area on each subject was retreated with the device 5 to 7 months later and the epilated hairs were counted. In three of the subjects, fewer hairs were counted, and more hairs were counted in five subjects. The differences in hair counts were not significant in any of the subjects.

Two of the 515(i) submissions (Refs. 3 and 4) provided unpublished clinical information supporting the effectiveness of tweezer-type epilators for hair removal. Although the numbers of subjects in both studies are low, these study results are suggestive of clinical effectiveness. In one study (Ref. 4), 12 subjects with 14 epilation sites were treated monthly for 6 months with both a radio frequency tweezer-type epilator and the same tweezer-type epilator with the radio frequency energy source disabled. Use of the radio frequency disabled device was considered equivalent to manual plucking. The epilated hairs were counted at 6 months and at 9 months after 3 months of no treatment. After 6-month treatment, there were fewer hairs in both groups (52.3 percent fewer in the radio frequency tweezer-type epilator group and 19.1 percent fewer in the radio frequency disabled tweezer-type epilator group). After 3 months of followup with no treatment, the radio frequency treated group had 46.3 percent fewer hairs indicating that hair loss persisted 3 months after the last treatment. The radio frequency disabled tweezer-type epilator group had the same number of hairs as before treatment indicating there was no overall hair loss after the last treatment.

In the second unpublished study (Ref. 3), use of a radio frequency tweezer-type epilator weekly for 4 months was compared to use ''at an earlier time'' of a galvanic epilator in seven subjects for 9 weeks. The radio frequency tweezer-type epilator subjects were examined (hair counts) at 15 and 30 days after the last treatment given at 4 months. Hair loss was reported to be 79 percent in the radio frequency epilator group and about 60 percent in the galvanic epilator group. Because the treatment schedules of the two groups are not identical, it is not possible to draw a definitive conclusion from this report other than it is suggestive of sustained hair removal.

Use of the noninvasive tweezer-type epilator eliminates some risks to health associated with the use of the needle-type epilator. The needle-type epilator, an invasive device, removes unwanted hair by inserting a wire needle into the hair follicle to destroy the dermal papilla of a hair. Serious adverse device events associated with the use of needle-type epilators are also rare, but they include reports of temporary pain, edema, erythema, scarring, infection, and posttreatment hyper- and hypopigmentation; a case of diphtheroid endocarditis; and spreading of flat warts (Refs. 6 and 9).

FDA now believes, based on publicly available information, that the tweezer-type epilator can be regulated as a class I device (general controls) to reasonably assure the device's safety and effectiveness. FDA further believes that agency review of premarket notification submissions for the device will not enhance public health.

VIII. References

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

1. 515(i) Submission submitted by Burke Associates International, Inc., received August 8, 1996.

2. 515(i) Submission submitted by Lucy Peters, International, Ltd., received September 5, 1996.

3. 515(i) Submission submitted by The Helene Edgar Corp., received September 10, 1996.

4. 515(i) Submission submitted by Removatron International Corp., received September 24, 1996.

5. Chernosky, M. E., ''Permanent Removal of Superfluous Hair,'' *Texas Medicine*, 67:72–78, 1971.

6. Hobbs, E. R., J. L. Ratz, and B. James, ''Electrosurgical Epilation,'' *Dermatologic Clinic*, 5:437–444, 1987.

7. McKinstry, C. T., M. Inaba, and J. N. Anthony, ''Epilation by Electrocoagulation: Facts that Result in Regrowth of Hair,'' *Journal of Dermatologic Surgery and Oncology*, 5:407–411, 1979.

8. Verdich, J., ''A Critical Evaluation of a Method for Treatment of Facial Hypertrichosis in Women,'' *Dermatologica*, 168:87–89, 1984.

9. Wagner, R. F., Jr., J. M. Tomich, and D. J. Grands, ''Electrolysis and Thermolysis for Permanent Hair Removal,'' *Journal of the American Academy of Dermatology*, 12:441–449, 1985.

IX. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) 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.

X. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device from class III to class I will relieve all manufacturers of the device of the cost of complying with the premarket

approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The Commissioner of Food and Drugs therefore certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XI. Comments

Interested persons may, on or before September 9, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 878 be amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

2. Section 878.5360 is revised to read as follows:

§ 878.5360 Tweezer-type epilator.

(a) *Identification*. The tweezer-type epilator is a device intended to remove hair by destroying the dermal papilla of a hair. The energy provided at the tip of the tweezer used to remove hair may be radio frequency, galvanic (direct current), or a combination of radio frequency and galvanic energy.

(b) *Classification*. Class I (General Controls). The device is exempt from premarket notification procedures in subpart E of part 807 of this chapter.

Dated: May 30, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–15312 Filed 6–10–97; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No. PA4057b; FRL–5835–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_x RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing volatile organic compound (VOC) and nitrogen oxides (NO_x) reasonably available control technology (RACT) for five major sources located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn in the manner described here.

DATES: Comments must be received in writing by July 11, 1997.

ADDRESSES: Written comments on this action should be addressed to David Campbell, Air, Radiation, and Toxics Division, Mailcode 3AT22, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 566–2191, at the EPA Region III office or via e-mail at knapp.ruth@epamail. epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information pertaining to this action, VOC and NO_X RACT determinations for individual sources located in Pennsylvania, provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 21, 1997.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 97–15096 Filed 6–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 68–0011; FRL–5835–7]

Approval and Promulgation of State Implementation Plans; Arizona—Maricopa County Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Arizona on April 29, 1997, establishing a summertime gasoline Reid Vapor Pressure (RVP) limit of 7.0 pounds per square inch (psi) for gasoline distributed in the Maricopa (Phoenix) ozone nonattainment area. Arizona has lowered the summertime RVP limit for this area to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the

Clean Air Act, as amended in 1990 (CAA). Arizona's fuel requirement is not preempted by federal fuels requirements because EPA is proposing to find that the control measure is necessary for the Maricopa area to attain the national ambient air quality standards (NAAQS) for ozone and is proposing to approve the measure into the Arizona SIP.

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed 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 document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 11, 1997.

ADDRESSES: Written comments should be sent to the Region IX contact listed below. Copies of the SIP revision are available in the docket (#AZ–RVP–97) for this rulemaking, which is open for public inspection at the addresses below. A copy of this notice is also available on EPA, Region IX's website at http://www.epa.gov/region09.

Air Planning Office (AIR–2), Air Division, Region IX, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105

Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix Arizona 85012

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, Air Planning Office, (AIR–2), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1225.

SUPPLEMENTARY INFORMATION: The revision is being proposed for approval into the Arizona SIP in section 13 of Arizona House Bill 2001 that adds to Arizona Revised Statutes (ARS) section 41–2083(E) [1] (summertime fuel requirement to limit RVP gasoline to 7.0 psi). This revision was submitted by the ADEQ to EPA on April 29, 1997.

On May 8, 1997, EPA found the April 29, 1997, SIP revision conformed to EPA's completeness criteria in 40 CFR Part 51, Appendix V and the **Federal Register** on August 26, 1991 (56 FR 42216). For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 28, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–15094 Filed 6–10–97; 8:45 am]

BILLING CODE 6560–50–P

[1] This section is currently codified in the ARS as section 41–2083(F).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA083–4062b; FRL–5835–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NO_X RACT Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing VOC and NO_X RACT for one facility. 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 SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying Technical Support Document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 11, 1997.

ADDRESSES: Written comments on this action should be addressed to David J. Campbell, Pennsylvania RACT Team Leader, Mailcode 3AT22, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 566–2185, at EPA Region III or via e-mail at lewis-janice@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information, pertaining to this action (VOC and NO_X RACT approval) affecting one facility in Pennsylvania, provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 23, 1997.

James W. Newsome,

Acting Regional Administrator, Region III.

[FR Doc. 97–15103 Filed 6–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5839–5]

National Emission Standards for Hazardous Air Pollutants: Source Category List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period on the Advanced Notice of Proposed Rulemaking for listing research and development facilities on the source category list (62 FR 25877), which was published on May 12, 1997.

DATES: Written comments must be received on or before July 11, 1997.

ADDRESSES: Submit comments in duplicate if possible to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–11, U.S. Environmental Protection

Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that separate copies be sent to the appropriate contact person listed below. The docket may be inspected at the above address between 8:00 a.m. and 5:30 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the ANPR, contact Mr. Mark Morris at (919) 541–5416, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: In response to a request from several companies involved in a large volume of research and development activities, the EPA is extending the public comment period from June 11, 1997, to July 11, 1997, on the Advanced Notice of Proposed Rulemaking for listing research and development facilities on the source category list. The EPA agrees that an extension of the comment period will provide for more meaningful, constructive comments on the ANPR. Having extended the comment period, the EPA nonetheless encourages commenters to submit as many of their comments as possible before July 11, this would assist the EPA in its considerations of the issues raised. Due to the unique nature of R&D activities and the EPA'a request in the ANPR for specific information and recommendations on how to list R&D facilities, the extension to the comment period will provide the EPA with more detailed comments that will result in future time savings on the project.

List of Subjects in 40 CFR Part 63

Air pollution control, Hazardous air pollutants, Research and development, Environmental protection.

Dated: June 5, 1997.

Mary D. Nichols,

Assistant Administrator.

[FR Doc. 97–15365 Filed 6–10–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 97–679]

Broadband PCS C and F Block Installment Payment Issues

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: On June 2, the Wireless Telecommunications Bureau (''Bureau'') of the Federal Communications Commission released a Public Notice requesting comment on broadband PCS C and F block installment payment issues. The Public Notice seeks comment on specific restructuring proposals, which are attached to the Public Notice as Appendices A through G. The Bureau invites any additional proposals for addressing broadband PCS C and F block financing terms. The Bureau also seeks comment on issues related to refund requests from licensees who submitted timely payments prior to the suspension of the installment payments. The Bureau plans to conduct a forum on broadband PCS C and F block installment payment issues, on June 30, 1997, in Washington, D.C.

DATES: Comments are due on or before June 23, 1997. Reply comments are due on or before July 8, 1997.

ADDRESSES: Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554. In addition, two copies should be hand delivered to: (1) Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Room 5322, 2025 M Street, N.W., Washington, D.C. 20554, Attention: Sande Taxali.

FOR FURTHER INFORMATION CONTACT: Rachel Kazan or Sande Taxali, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice released on June 2, 1997. The complete Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., 20554, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, N.W., Washington, D.C. 20037. The complete Public Notice is also available on the Commission's Internet home page (http://www.fcc.gov).

Summary of the Public Notice

Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues

June 2, 1997.

Comment Due Date: June 23, 1997

Reply Comment Due Date: July 8, 1997

1. The Wireless Telecommunications Bureau (''Bureau'') has received a request from several broadband Personal Communications Services (''PCS'') licensees requesting that the Commission modify the payment frequency for broadband PCS C and F block licensees from quarterly to annual installments. *See* Letter from Thomas Gutierrez, Esq., et al. to Michele C. Farquhar, Esq., Chief, Wireless Telecommunications Bureau (March 13, 1997) (''Gutierrez Letter''). Petitioners include Alpine PCS, Inc.; DCR PCS, Inc.; Eldorado Communications, L.L.C.; Indus, Inc.; KMTel L.L.C.; Mercury PCS, L.L.C.; Microcom Associates; NextWave Communications, Inc.; and R&S PCS, Inc. As a result of the pendency of this request and other issues regarding certain debt functions, the Bureau released an *Order* which suspended the deadline for broadband PCS C block installment payments. *See Order,* In the Matter of Installment Payments for PCS Licenses, DA 97–649 (released: March 31, 1997). PCS F block installment payments were later suspended as well. *See* Public Notice, ''FCC Announces Grant of Broadband Personal Communications Services D, E, and F Block Licenses,'' DA 97–883 (released: April 28, 1997) at p. 2.

2. The Bureau subsequently received several letters that propose alternative financing arrangements for broadband PCS C and F block licensees. *See* Letter from Leonard S. Sawicki, Director, FCC Affairs, MCI Telecommunications Corporation, to Mr. William F. Caton, Secretary, Federal Communications Commission (May 1, 1997) (''Sawicki Letter''). In this proposal, MCI requests that the Commission allow C block licensees to defer payment and accrue interest for the first five years of the license term. MCI also suggests that the Commission modify the PCS ownership and attribution rules to encourage additional investment in C block licensees. Finally, MCI suggests that such changes be available to all broadband PCS C block licensees. *See also* Letter from James H. Barker and Michael S. Wroblewski, Counsel to Fortunet Communications, L.P., to Mr. William F. Caton, Secretary, Federal Communications Commission (May 9, 1997) (''Barker Letter''). In its proposal, Fortunet requests that the Commission (1) suspend interest payments until year five of the license term; (2) extend the license term to 20 years; (3) modify the C block control group rules; (4) allow the transfer of C block licenses before the expiration of the five year holding period with modified unjust enrichment payments; and, (5) increase the level of foreign equity permitted. The Bureau also recently received a petition for rulemaking regarding the issue of broadband PCS C and F block payments. *See* Cook Inlet Region, Inc., Petition for Rulemaking, filed May 7, 1997 (RM–

9093). Cook Inlet requests that the Commission initiate a rulemaking to establish the requirements and procedures for the disposition of the installment payment obligations of Commission licensees who obtained their licenses by competitive bidding. Additionally, Cook Inlet requests that the Commission lift the stay of the deadline for broadband PCS C and F block installment payments. (''Cook Inlet Petition''). In order to consider which options would be most appropriate for a restructuring of broadband PCS C and F block debt, the Bureau seeks comment on the proposals received to date, as set forth in the Gutierrez Letter, the Sawicki Letter, the Barker Letter, and the Cook Inlet Petition. In addition, we note that other proposals have been informally raised with the Bureau. *See,* e.g., General Wireless Inc., Informal Proposal (May 6, 1997). In its proposal, General Wireless recommends that the Commission reduce the principal amount of its debt from an average C block price of $40/pop to $15/pop, consistent with A/B block prices. The Bureau seeks comment on whether PCS licensees would be able to prepay their installment debt if any such discount were to occur. Are there alternative proposals for calculating the present value of the broadband PCS C and F block debt to the government that would permit licensees to prepay the debt based on the net present value?

3. The Bureau invites any additional proposals for addressing the C and F block broadband PCS financing terms. Comments received in response to this Public Notice will be incorporated into the record for the WT Docket No. 97–82 proceeding. *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making, (62 FR 13540–02).* In this Notice of Proposed Rulemaking the Commission seeks comment on numerous installment payment issues, including various options for installment payments structures, and input on improvements in the installment payment program. Copies of the cited proposals are attached to this Public Notice as Appendices A through H. These proposals can also be found in the Wireless Telecommunications Bureau Reference Room, Room 5608, 2025 M Street, N.W., Washington D.C. 20554.

4. In addition, the Bureau will hold a public forum to discuss the issues of C and F block restructuring and the current capital markets for financing these licenses. The Bureau plans to conduct the forum on June 30, 1997 in Washington, D.C. Further information concerning this event will be provided in a subsequent Public Notice.

5. Finally, the Bureau has received numerous refund requests from licensees that submitted timely payments prior to the suspension of the installment payments. The Bureau seeks comment on whether these licensees should be offered any credit for the time value of their payments as a means to compensate these licensees for the cost of retaining their money during the period of payment suspension. *See,* e.g., Letter from Michael S. Wroblewski, Latham & Watkins, Counsel for Southeast Wireless Communications, L.P., to Regina Dorsey, Billings and Collections Branch, Office of Managing Director (April 7, 1997) (''Wroblewski Letter''); Letter from Sylvia Lesse, Kraskin & Lesse, LLP, for Comtel PCS Mainstreet Limited Partnership, to A. Jerome Fowlkes, Auctions Division, Wireless Telecommunications Bureau (April 4, 1997) (''Lesse Letter''); Letter from Julia F. Kogan, Hogan & Hartson L.L.P., for Americall International LLC, to Linda King Friedman, Financial Operations Division, Office of Managing Director (April 2, 1997) (''Kogan Letter''). The Bureau seeks comment on how such compensation could be formulated.

6. Parties should file comments on or before June 23, 1997 and replies to comments on or before July 8, 1997, with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554. In addition, two copies should be hand delivered to: (1) Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Room 5322, 2025 M Street, N.W., Washington, D.C. 20554, Attention: Sande Taxali. Copies of the petitions, comments, and reply comments may be obtained from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS), 2100 M Street, N.W. Suite 140, Washington, D.C., 20037, (202) 857–3800. Copies are also available for public inspection during regular business hours in Room 5608, 2025 M Street, N.W., Washington, D.C. 20554. When requesting copies, please refer to DA–679.

7. For further information contact Rachel Kazan or Sande Taxali, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau at (202) 418–0660.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–15315 Filed 6–10–97; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register
Vol. 62, No. 112
Wednesday, June 11, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 6, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) May be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency May not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Winter Pears Grown in Oregon, Washington, and California, Marketing Order No. 927.

OMB Control Number: 0581–0089.

Summary of Collection: Information is collected from growers and handlers for referendums, marketing agreements, and volume of fruit sold.

Need and Use of the Information: The information is used to administer Marketing Order No. 927.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 1,890.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Biennially

Total Burden Hours: 3,571.

Animal and Plant Health Inspection Service

Title: Imported Seed and Screening.

OMB Control Number: 0579-New.

Summary of Collection: All seeds offered for entry into the United States must be accompanied by a declaration from the importer and the containers must be labeled. A certificate of analysis stating that the seeds were analyzed and found to present no noxious weed threat to the United States must accompany the shipment.

Need and Use of the Information: The information is used to prevent the spread of insect pests and noxious weeds in the United States.

Description of Respondents: Business or other for-profit; State, Local or tribal Government.

Number of Respondents: 1,200.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 11,564.

Farm Service Agency

Title: Foreign Investment Disclosure Act Report, 7 CFR 781.

OMB Control Number: 0560–0097.

Summary of Collection: The Agricultural Foreign Investment Disclosure Act of 1978 requires foreign investors to timely report all held, acquired, or transferred U.S. agricultural land.

Need and Use of the Information: The information is used to track foreign investment in U.S. agricultural land and prepare an annual report to Congress and the President.

Description of Respondents: Individuals or households; Business or other for-profit; Farms.

Number of Respondents: 4,375.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,108.

Donal Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–15263 Filed 6–10–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–97–006]

Notice of Request for Approval of an Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Collection.

SUMMARY: Notice; in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an approval of an information collection in support of the State Option Contracts (SOC) Program.

DATES: Comments on this notice must be received by August 11, 1997.

ADDITIONAL INFORMATION: Contact Connie Helms, USDA/AMS/Poultry Division, Room 3943–S, 1400 Independence Avenue S.W., STOP 0260, Washington, DC 20250–0260, (202) 720–7693.

SUPPLEMENTARY INFORMATION:

Title: Donation of Foods for use in the United States, its territories and possessions and areas under its jurisdiction.

OMB Number: 0581–xxx

Expiration Date of Approval:

Type of Request: Approval of a new information collection.

Abstract: Department of Agriculture (USDA) Food Distribution Programs assist American farmers and needy people by purchasing commodities and delivering them to State agencies that, in turn, distribute them to organizations for use in providing food assistance to those in need. The commodities help to meet the nutritional needs of children from preschool age through high school in USDA Child Nutrition Programs and needy individuals participating in other domestic feeding programs.

In accordance with the provisions of section 3A of the Commodity Distribution Reform Act (Act) and WIC Amendments of 1987 (7 U.S.C. 612c note) as added by section 1773 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421 note) and 7 CFR part 250, USDA acts as the administering agency for the implementation and operation of the SOC Program. This legislation allows the Secretary broad authority to establish regulatory provision promoting accountability in the use of USDA commodities by Federal, State, and private agencies.

This program was previously administered by the Food and Consumer Service (FCS). Effective school year 1997–98, the Agricultural Marketing Service (AMS) will assume the responsibility for administering the SOC Program.

The collection of information for the program is currently approved under OMB number 0584–0293. The expiration date of this approval is September 30, 1997.

The information collection and record keeping requirements in this request are essential in the administration of the SOC Program.

The information collected is used only by authorized representatives of the USDA. The information is used to assure compliance with the Act and the provisions of the SOC Federal-State agreement.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.00 hours per response.

Respondents: State or local governments.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.00

Estimated Total Annual Burden on Respondents: 40 hours.

Copies of this information collection can be obtained from Connie Helms, Commodity Procurement Branch, at (202) 720–7693.

Send Comments regarding, but not limited to, the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to 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, to: Catherine V. Smith, Acting Chief, USDA/AMS/Poultry Division, Room 3943–S, 1400 Independence Avenue S.W., STOP 0260, Washington, DC 20250–0260.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 5, 1997.

Michael D. Holbrook,

Director, Poultry Division, Agricultural Marketing Service.

[FR Doc. 97–15254 Filed 6–10–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–044–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Evaluation, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For copies of the environmental assessments and findings of no significant impact, contact Mr. Clayton Givens at (301) 734–7612; e-mail: cgivens@aphis.usda.gov. Please refer to the permit numbers listed below when ordering the documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, the Animal and Plant Health Inspection Service (APHIS) assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date Issued	Organisms	Field test location
96–355–01	Applied Phytologics, Incorporated.	3–31–97	Rice plants genetically engineered to express proteins of pharmaceutical interest.	California.
97–023–01	Auburn University	3–31–97	*Pseudomonas syringae* pv. *tomato* strain DC3000 genetically engineered for decreased virulence.	Alabama.
97–044–02	Betaseed, Incorporated	4–25–97	Sugar beet plants genetically engineered to express virus resistance and a marker gene.	Idaho.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

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

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–15257 Filed 6–10–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–027–1]

International Sanitary and Phytosanitary Standard-Setting Activities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and solicitation of comments.

SUMMARY: In accordance with legislation implementing the Uruguay Round of the General Agreements on Tariffs and Trade, we are informing the public of international standard-setting activities of the Office International des Epizooties, the Secretariat of the International Plant Protection Convention, and the North American Plant Protection Organization, and we are soliciting public comment on the standards to be considered.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–027–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state in your letter that your comments refer to Docket No. 97–027–1, and state the name of the committee or working group to which your comments are addressed. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. John Greifer, Acting Director, Trade Support Team, International Services, APHIS, room 1128, South Building, 14th Street and Independence Avenue SW, Washington, DC, 20250, (202) 720–7677; or e-mail jgreifer@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: Legislation implementing the Uruguay Round of the General Agreements on Tariffs and Trade (the Uruguay Round Agreements Act) was signed into law (Pub. L. 103–465) by the President on December 8, 1994. The Uruguay Round Agreements Act amended title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 *et seq.*) by adding a new subtitle F, ''International Standard-Setting Activities.'' Subtitle F requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary standard-setting activities of each international standard-setting organization. The designated agency must inform the public by publishing a notice in the **Federal Register**, which provides the following information: (1) The sanitary or phytosanitary standards under consideration or planned for consideration by the international standard-setting organization; and (2) for each sanitary or phytosanitary standard specified: a description of the consideration or planned consideration of the standard; whether the United States is participating or plans to participate in the consideration of the standard; the agenda for United States participation, if any; and the agency responsible for representing the United States with respect to the standard.

Subtitle F defines ''international standard'' as a standard, guideline, or recommendation: (1) Adopted by the Codex Alimentarius Commission regarding food safety; (2) developed under the auspices of the Office International des Epizooties regarding animal health and zoonoses; (3) developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with the North American Plant Protection Organization regarding plant health; or (4) established by or developed under any other international organization agreed to by the member countries of the North American Free Trade Agreement or by member countries of the World Trade Organization.

The Codex Alimentarius Commission (Codex) was created in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization. It is the major international organization for encouraging international trade in food and protecting the health and economic interests of consumers.

The Office International des Epizooties (OIE) was created in Paris, France, in 1924, with the signing of an international agreement by 28 countries. The OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals, assists in the development of animal production through improved health information, and shares scientific progress among its members. The OIE provides the major international forum for discussion and agreement on recommendations and proposals on topics such as disease control, technical cooperation, trade standards, and the exchange of research and disease information.

The International Plant Protection Convention (IPPC), in effect since 1952, is a multilateral treaty, administered by FAO, that promotes ''* * * common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote measures for their control (IPPC Preamble).'' The IPPC Secretariat, established within the FAO in 1993, works with plant protection organizations at the national and regional levels to harmonize plant quarantine activities worldwide, facilitate the dissemination of phytosanitary information, strengthen

international cooperation, and support technical assistance to developing countries.

The North American Plant Protection Organization (NAPPO) was created in 1976 to coordinate plant protection activities in Canada, the United States, and Mexico. NAPPO provides a mechanism by which the three countries can exchange information related to plant pest control. NAPPO conducts its business through permanent and ad hoc committees and annual meetings of the three member countries. NAPPO cooperates with other regional plant protection organizations and the FAO to achieve the objectives of the IPPC.

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institution for the conduct of trade relations among the members in matters related to the Uruguay Round Agreements. The WTO is the successor to the General Agreements on Tariffs and Trade. U.S. membership in the WTO was approved by Congress when it enacted the Uruguay Round Agreements Act.

The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of Codex, OIE, IPPC, and NAPPO. This responsibility was delegated to the United States Department of Agriculture's Food Safety and Inspection Service (FSIS) for Codex activities and Animal and Plant Health Inspection Service (APHIS) for OIE, IPPC, and NAPPO activities.

FSIS is responsible for publishing an annual notice in the **Federal Register** to inform the public of SPS standard-setting activities for Codex. APHIS is responsible for publishing notice of OIE, IPPC, and NAPPO activities related to international standards.

The United States is a participant in each of the following activities, and APHIS is the agency responsible for representing the United States with respect to these standards. In some cases, working groups and committees have not yet set meeting dates and locations or determined specific standards to be discussed. Also, because working groups and the issues they address are not static, this list may not present a complete picture of OIE, IPPC, and NAPPO SPS standard-setting activities for the coming year.

OIE Standard Setting Activities

1. Committee/Working Group: General Session.

Agency/U.S. Participant(s): Delegate—Dr. Joan Arnoldi, Deputy Administrator, Veterinary Services, APHIS, Washington, D.C.; Alternate delegate—Dr. Alex Thiermann, Regional Director (Europe, Africa, and Asia), International Services, APHIS, Brussels, Belgium.

General Purpose: Establish, review, and adopt international standards dealing with animal health.

Date of Meeting: May (annually).

Location of Meeting: Paris, France.

Major Discussion/Agenda: Animal health standards related to trade, including risk assessment standards, regionalization, and specific disease issues.

2. Committee/Working Group: Regional Commission for the Americas.

Agency Participant(s): Dr. Joan Arnoldi.

General Purpose: The Regional Commission for the Americas is one of four OIE Regional Commissions. Regional Commissions nominate candidates for election to the expert Commissions and Working Groups, discuss regional animal health issues, and propose topics of regional concern as agenda items or for scientific review at upcoming meetings of the OIE General Session.

Dates of Meetings: May and December or January (twice annually).

Location of Meetings: Variable.

Major Discussion/Agenda: Location of regional office for the Americas, animal health diseases control issues of regional concern.

3. Committee/Working Group: Standards Commission.

Agency/U.S. Participant(s): Dr. James Pearson, Director, National Veterinary Services Laboratory, APHIS, Ames, IA.

General Purpose: The Standards Commission recommends changes in international standards for diagnostic tests and vaccines. These changes, when approved by the General Session, are published in the *OIE Manual of Standards for Diagnostic Tests and Vaccines.*

Dates of Meetings: February and September (twice annually).

Location of Meetings: Paris, France.

Major Discussion/Agenda: Review and recommend revisions to international diagnostic test standards published in the *OIE Manual of Standards for Diagnostic Tests and Vaccines;* review OIE reference laboratories, OIE reference sera, laboratory quality assurance, and make recommendations to the OIE Animal Health Code Commission; discuss which diagnostic procedures would be most appropriately prescribed for specific animal and poultry diseases.

4. Committee/Working Group: International Animal Health Code Commission.

Agency/U.S. Participant(s): Dr. Alex Thiermann.

General Purpose: The Code Commission develops disease-specific recommendations for international standards regarding the movement of animals and animal products. The Code Commission also develops generic standards for animal transport, regionalization and risk assessment procedures, surveillance and monitoring guidelines, and procedures for evaluating animal health infrastructures. When adopted by the General Session, these standards are published in the OIE International Animal Health Code, the WTO-recognized manual of standards for international movement of animals and animal products.

Dates of Meetings: January and September (twice annually).

Location of Meetings: Paris, France.

Major Discussion/Agenda: The Code Commission reviews and updates the Code after proposed changes are circulated to member countries for comments. Updates are submitted for adoption at the General Session.

5. Committee/Working Group: Foot and Mouth Disease (FMD) and Other Epizootics Commission.

Agency/U.S. Participant(s): There is no Agency or U.S. member on the FMD Commission.

General Purpose: The FMD and Other Epizootics Commission monitors the world status of FMD and other major animal diseases and prepares recommendations for adoption by the General Assembly.

Dates of Meetings: The Commission meets when called by the Director General.

Location of Meetings: Paris, France.

Major Discussion/Agenda: Current issues facing the Commission: International standards for FMD serological testing, protocols for endorsement of FMD-free areas, standards for epidemiological surveillance for contagious bovine pleuropneumonia, and surveillance and monitoring standards for bovine spongiform encephalopathy (BSE).

6. Committee/Working Group: Fish Diseases Commission.

Agency/U.S. Participant(s): There is no Agency or U.S. member on the Fish Diseases Commission. However, Dr. J. R. Winton, Research Team Leader at Northwest Biological Science Center in Seattle, WA, is a U.S.-citizen observer.

General Purpose: The Fish Diseases Commission drafted an *Aquatic Animal Health Code* and a *Diagnostic Manual*

for Aquatic Animal Diseases that contain international standards for fish diseases. These manuals have been approved by the General Session.

Date of Meeting: September (annually).

Location of Meeting: Paris, France.

Major Discussion/Agenda: Current activities of the Fish Diseases Commission: Continual updating of the OIE Fish Disease Manuals, preparation of the annual OIE report on the world-wide status of fish diseases, and planning and hosting international conferences on current topics in aquatic animal health.

7. Committee/Working Group: Ad Hoc Working Group on Biotechnology.

Agency/U.S. Participant(s): Dr. John R. Gorham, Animal Disease Research Unit, Agricultural Research Service, USDA, Pacific Western Area, is President of the Working Group.

General Purpose: The Ad Hoc Working Group on Biotechnology reviews the biotechnological aspects of each chapter of the OIE Manual for Diagnostic Tests and Vaccines and prepares an annual report and recommendations dealing with biotechnology for consideration by the General Session. The Working Group has also developed an international database on sources of biotechnologically engineered vaccines and diagnostic reagents.

Date of Meeting: The Working Group meets when called by the Director General.

Location of Meeting: Paris, France.

Major Discussion/Agenda: Current issues facing the Working Group: Ongoing reviews of diagnostic test kits, applications of genetic engineering to animal health, veterinary products developed using biotechnology, and possible uses of new biotechnological techniques in veterinary medicine.

8. Committee/Working Group: Working Group on Veterinary Drug Registration.

Agency/U.S. Participant(s): Dr. Sharon R. Thompson, Special Assistant to the Director, Center for Veterinary Medicine, Food and Drug Administration, USDA.

General Purpose: Prepares recommendations for the General Session.

Date of Meeting: Every 2 years.

Location of Meeting: Paris, France.

Major Discussion/Agenda: Current issues facing the group: Planning for the upcoming session of the International Technical Consultations on Veterinary Drug Registration, developing training programs for veterinary drug registration officials of OIE member countries, and assisting an OIE ad hoc group in developing draft international guidelines for veterinary drug registration.

9. Committee/Working Group: Working Group on Informatics and Epidemiology.

Agency/U.S. Participant(s): There is no Agency or U.S. member on the Working Group. However, Dr. Steve Weber, Acting Director, Centers for Animal Health and Epidemiology, APHIS, Fort Collins, CO, serves as a consultant to the working group.

General Purpose: The Working Group on Informatics and Epidemiology develops programs to increase the efficiency of OIE communications and to assist animal health officials of member countries to more effectively utilize contemporary communications technology. One project of the Working Group is HandiStatus, an information network on animal diseases of international importance.

Date of Meeting: The Working Group meets when called by the Director General.

Location of Meeting: Paris, France.

Major Discussion/Agenda: The Working Group is currently developing a Windows version of HandiStatus and designing and developing the OIE Web Page.

10. Committee/Working Group: Working Group on Wildlife Diseases.

Agency/U.S. Participant(s): Dr. Victor Nettles, Director, Southeastern Cooperative Wildlife Disease Study, College of Veterinary Medicine, University of Georgia, and Dr. M.H. Woodford (Working Group Chairman).

General Purpose: The Working Group addresses issues involving the relationship between diseases of wildlife and those of domestic animals and poultry.

Date of Meeting: The Working Group meets when called by the Director General, usually annually in the summer or fall.

Location of Meeting: Paris, France.

Major Discussion/Agenda: Some issues currently facing the Working Group are: development of reporting methods for wildlife diseases (particularly those naturally transmissible between domesticated and wild species); facilitating worldwide wildlife disease surveillance and the applicability of routine diagnostic tests to wildlife species; and problems related to propagation of wildlife species in captivity and the disease hazards associated with their release from zoos or game farms.

11. Committee/Working Group: Ad Hoc Working Group on Animal Disease Categorization.

Agency/U.S. Participant(s): Dr. William D. Hueston, Associate Dean, Virginia-Maryland Regional College of Veterinary Medicine.

General Purpose: The Working Group is considering changes in disease categorization used to determine the urgency of reporting and the placement of certain diseases on OIE Lists A, B, or C. The Working Group submitted a report to the Code Commission suggesting changes in categorization criteria. The proposed changes are being reviewed by the Code Commission. After the Code Commission reviews the report, it will be presented for review by the General Session.

Date of Meeting: The Working Group meets when called by the Director General.

Location of Meeting: Paris, France.

Major Discussion/Agenda: The issue currently facing this working Group is to determine how frequently certain diseases should be reported to the OIE.

12. Committee/Working Group: Ad Hoc Group on Transmissible Spongiform Encephalopathies (TSEs): Coordination of Research and Epidemiological Studies.

Agency/U.S. Participant(s): Dr. Linda Detwiler, Veterinary Services, APHIS, Robbinsville, NJ.

General Purpose: The Group reported its findings on TSEs and BSE to the FMD Commission and developed a separate report on TSE research needs.

Date of Meeting: The group is currently inactive.

Location of Meeting: Paris, France.

Major Discussion/Agenda: Currently there are no issues facing this Working Group.

For further reference, the OIE standards are contained in two OIE publications, the ''International Animal Health Code'' and the ''OIE Manual of Standards for Diagnostic Tests and Vaccines.'' Staff veterinarians with National Center for Import and Export, Veterinary Services, APHIS, each have copies of these publications. The publications may also be ordered from the OIE web page at http://www.oie.org.

IPPC Standard Setting Activities

There is no rigid structure for development of draft IPPC standards. In some cases, the IPPC Secretariat may form an international working group to draft a standard deemed a priority by FAO. In most cases, however, draft IPPC standards originate from industry, State or provincial governments, or other interested parties; they are submitted to the IPPC Secretariat through the representative organization of the member country (APHIS) or through the regional plant protection organization

(NAPPO). The IPPC Secretariat refers draft standards to the Committee of Experts on Phytosanitary Measures (CEPM). The CEPM considers the draft standards and recommends action; the draft standards are submitted either to FAO for approval or to member countries for consultation and comment (country consultation). The FAO approval process involves review by several bodies—the FAO Committee on Agriculture (COAG), FAO Council, and FAO Conference—before standards are adopted.

Technical experts from the United States have participated directly in working groups and indirectly as reviewers of all current IPPC draft standards. In addition, documents and positions developed by APHIS and NAPPO have served as the basis for many of the standards adopted to date. A range of standards are currently moving through different stages of development, review, and approval. The status of all IPPC standards (existing, drafted, and proposed) is summarized below:

I. Reference Standards (completed but subject to revision).

a. *Plant Quarantine Principles as Related to Trade,* adopted in 1993.

b. *Glossary of Phytosanitary Terms,* revised in September 1995.

c. *Policy and Standards for Construction of International Standards for Phytosanitary Measures (ISPMs),* adopted in May 1994.

d. *International Plant Protection Convention,* revised in April 1997.

II. Completed Standards (approved by the FAO Committee on Agriculture and FAO Council and adopted by FAO Conference in November 1995).

a. *Guidelines for Pest Risk Analysis (PRA).*

b. *Code of Conduct for the Import and Release of Exotic Biological Control Agents.*

c. *Requirements for the Establishment of Pest Free Areas.*

III. Draft Standards (currently being finalized).

a. *Guidelines for Survey and Monitoring Systems,* revised and approved by the CEPM in May 1996, adopted by COAG in April 1997.

b. *Framework for an Export Certification System,* revised and approved by the CEPM in May 1996, adopted by COAG in April 1997.

c. *Inspection Methodology*—redrafted for review by the October 1997 CEPM and possible country consultation.

IV. Draft Supplementary Standards (require additional expert review).

a. *PRA, Pest Categorization.*

b. *PRA, Economic Impact Assessment.*

c. *PRA, Probability of Pest Introduction.*

d. *PRA, Pest Management.*

e. *Procedures for Determining Freedom of an Area—Citrus Canker,* drafted in October 1995; supplement to the *Guidelines for Survey and Monitoring* standard which is currently under review by citrus canker experts.

The four PRA supplementary standards (a through d) were combined into one integrated PRA supplementary standard in 1996. This integrated supplementary standard was not approved by the CEPM pending further work; upon approval by the CEPM (possibly in October 1997) the document will go for country consultation.

V. New Standards (in initial draft stage).

a. *Post-entry Quarantine Facilities,* postponed since 1996, no draft to date.

b. *Pest Free Production Sites,* drafted in October 1995, may be finalized by CEPM in October 1997 for FAO adoption.

c. *Eradication,* drafted in November 1995, may be finalized by CEPM in October 1997 for FAO adoption.

d. *Guidelines for Import Regulations,* drafted in April 1996, will be reviewed by CEPM in October 1997 for country consultation.

e. *Phytosanitary Certification (supplementing annexes to the Convention),* drafted August 1996, will be reviewed by CEPM in October 1997 for country consultation.

f. *Pest Status Reports (previously referred to as Pest Data Sheets),* drafted in March 1997, will be reviewed by CEPM in October 1997 for country consultation.

g. *Pest Management (Quarantine Security),* working group proposed for 1997.

h. *Dispute Resolution,* proposed by some members as a new priority.

i. *Regulated Non-quarantine Pests,* proposed by some members as a new priority.

Further information on the IPPC standards is available from the United Nation's Food and Agriculture Organization web page at: http://faowfs0a.fao.org/waicent/faoinfo/agricult/agp/agpp/PQ/Default.htm.

Revision of the IPPC

The IPPC was amended in 1979 in response to changing plant pest conditions and quarantine concerns. The amendment came into force in 1991 upon ratification by two-thirds of the IPPC signatory countries. However, the current IPPC does not directly recognize SPS principles and obligations. Nor does it discuss the harmonization of phytosanitary measures through standards. In October 1995, IPPC signatory countries agreed to revise the IPPC again in response to changes in global agriculture, including the requirements of the SPS Agreement regarding the development and application of international phytosanitary standards.

The IPPC Secretariat gathered recommendations from signatory countries regarding potential revisions to the current scope, coverage, and provisions of the IPPC. In March 1996, plant quarantine experts from various signatory countries met to discuss and develop draft text for the revised IPPC. In January 1997, IPPC signatory countries met in Rome to further negotiate changes to the revised text. Due to an inability to resolve several key issues over the course of the Technical Consultation, the Consultation did not produce a final revised text to submit to FAO for approval.

Following the January Technical Consultations, the COAG established an open-ended working group to finalize the revision. This working group developed a final revised text which was presented to the COAG in April 1997. The COAG adopted the revised text and will submit it to FAO Council and legal experts in June 1997 for consideration. If Council approves the revised text, it will be submitted to Conference for final approval in November 1997. If approved, the revised IPPC will be distributed to signatory countries in January 1998.

NAPPO Standard Setting Activities

Current information on NAPPO policies, standard setting activities, U.S. participants, and meeting agendas and dates is available on the NAPPO home page at http://www.nappo.org. Interested individuals may also contact Marshall Kirby, current APHIS representative on the APHIS NAPPO Standards Panel, at (301) 734–8262.

NAPPO Standards Panel

The NAPPO Standards Panel handles or supports development of NAPPO standards and other cross-commodity issues, reviews proposed international standards, and recommends NAPPO positions on proposed international standards. At the July 1997 meeting, the Panel will develop a work plan for the upcoming year. Issues to be considered include:

a. Review of existing NAPPO and international standards for equivalency; and

b. Planning for NAPPO development of, or input into, new or revised regional and international standards.

In addition, the Standards Panel supports the work of other NAPPO panels on standards development. Following is a summary of panel charges as they relate to the development of standards (see the NAPPO home page for the most up-to-date information, including a list of U.S. participants on the panels):

Accreditation Panel

The Panel will finalize the draft standard, The accreditation of individuals to issue phytosanitary certificates, for approval by the NAPPO Executive Committee (EC) at the 1997 NAPPO Annual Meeting (October 21–24).

Biological Control Panel

The Panel will:

a. Develop a framework, with timelines, for the development of science-based guidelines to harmonize regulations and protocols for the importation, quarantine, and release of exotic biological control agents; and

b. Revise and resubmit draft of NAPPO guidelines for petition for release of exotic phytophagous insects and mites for the biological control of weeds in the NAPPO Standards format.

Biotechnology Panel

The Panel will:

a. Develop a NAPPO biotechnology standard, taking into consideration existing national and international standards; and

b. Explore development of a NAPPO release policy for wild types of maize (cotton and tomato) and consider whether it can be included in the standard.

Forestry Panel

The Panel will:

a. Develop a NAPPO standard for the movement of Christmas trees within and among NAPPO member countries;

b. Harmonize gypsy moth regulations among NAPPO member countries;

c. Develop a NAPPO standard for the movement of wood (including dunnage); and

d. Review the European Plant Protection Organization list of forestry words/definitions for possible adoption by NAPPO; propose alternatives for those considered inappropriate.

Fruit Fly Panel

The Panel will:

a. Complete the list of quarantine significant fruit flies for the NAPPO region and member countries; and

b. Prepare NAPPO standards pertaining to survey procedures and phytosanitary procedures for quarantine significant fruit flies.

Fruit Tree and Grapevine Nursery Stock Certification Standard Panel

The Panel will:

a. Complete the grapevine portion of the Fruit Tree and Grapevine Nursery Stock Certification Standard in time for EC approval at the 1997 annual meeting; and

b. Proceed with other components of the standard.

Grains Panel

The Panel will:

a. Review the list of weed species intercepted by Mexico in imported consignments of wheat grain for processing from other NAPPO countries and determine which species meet the NAPPO definition of quarantine pest;

b. Determine which phytosanitary measures will reduce the probability of introduction of weed species that are determined to be quarantine pests into Mexico's territories;

c. Review the *Tilletia controversa* (dwarf bunt) PRA conducted by Mexico in March 1996 and recommend the pest status for this species in the NAPPO region; and

d. Complete development of a NAPPO sampling protocol for the examination of railway (box) cars for (1) the presence of wheat grains and (2) the presence of Karnal bunted wheat grains that meets the quarantine security requirements of NAPPO member countries.

Hemispheric Training Center Panel

The Panel will continue with the design of a Hemispheric Training Center to enable plant protection staffs in Western Hemisphere countries to build and strengthen plant health infrastructures and to harmonize international plant protection and quarantine systems.

Irradiation Panel

The NAPPO Irradiation Standard, developed by the Irradiation Panel, was approved by the EC in April 1997. There are no current charges to this panel.

Pest Risk Analysis (PRA) Panel

The Panel will:

a. Develop guidelines for the harmonized implementation and application of the NAPPO PRA Standard and consider possible amendment of the standard;

b. Compare and contrast how individual NAPPO member countries apply the NAPPO PRA Standard using, as a case study, the PRAs which each country has prepared on Chrysanthemum white rust; and

c. Analyze the Chrysanthemum white rust PRAs prepared by NAPPO member countries to determine the status of the causal agent of this disease as a quarantine pest in the NAPPO region.

Potato Panel

The Panel will:

a. Advance the NAPPO Potato Standard towards becoming an international standard; and

b. Convene a subgroup to harmonize and/or determine equivalencies among diagnostic tests for Potato Virus Y Strain N within the NAPPO region.

Comments on standards being considered or to be considered by any of the committees or working groups listed above may be sent to APHIS as directed under the heading **ADDRESSES**.

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

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–15256 Filed 6–10–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Perkins—Manistique 138 kV Transmission Line Project

AGENCY: Forest Service, USDA.

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

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the effects of a proposal by Wisconsin Electric Power Company WEPCO and Edison Sault Electric (ESE) to construct a 24 mile, 138 kV transmission line in Delta county, Michigan. The project area includes portions of the Hiawatha National Forest (HNF), Rapid River/Manistique Ranger Districts.

DATES: Written comments concerning the scope of the analysis (issues, preliminary alternatives, etc.) must be received in writing by July 11, 1997.

ADDRESSES: Send written comments and suggestions to Mr. William F. Spinner, Forest Supervisor, Hiawatha National Forest, 2727 Lincoln Road, Escanaba, Michigan, 49829.

FOR FURTHER INFORMATION CONTACT: Technical questions regarding the proposed action and EIS should be directed to Ms. Patty Beyer, Project Coordinator, (906) 228–9681.

SUPPLEMENTARY INFORMATION: WEPCO/ESE propose to construct, operate, and maintain a 138 kV double circuit transmission line from the existing Perkins Substation one mile west of Perkins, Michigan to the proposed Indian Lake Substation one mile northwest of Manistique, Michigan. The proposed 24 mile route lies adjacent to the Lakehead Oil Company pipeline right-of-way. The Substation locations are outside the boundaries of the Hiawatha National Forest. The Federal Land and Policy Act allows the use of national forest lands for electric transmission rights-of-way. The Hiawatha National Forest Land and Resource Management Plan allows for utility right-of-ways within management areas crossed by the proposed project.

WEPCO/ESE have identified a lack of adequate electric transmission facilities serving Delta and Schoolcraft counties in the Upper Peninsula of Michigan,

presently an ESE service territory. The Michigan Public Service Commission has determined the existing service is inadequate in three areas, including load growth, reliability, and electrical transmission system reinforcement. WEPCO/ESE's load growth has nearly exceeded capacity and its need for reliable service and additional capacity to meet peak system demand is urgent. The purpose for constructing the project is to increase reliability of service and provide an additional source of power to the customers served within WEPCO/ESE service area.

Permits or licenses required to implement the proposed action include: right-of-way easement from the Michigan Department of Natural Resources, wetland permits and erosion control standards from the Michigan Department of Environmental Quality, Section 404 determination and permit from the US Army Corps of Engineers, road crossing permits from Delta and Schoolcraft counties and the Michigan Department of Transportation, railroad crossing permits from the Wisconsin Central Railroad, approval of Interchange Agreement from the Federal Energy Regulatory Commission, Certificate of Public Convenience and Necessity from the Public Service Commission, Act 69 approval from the Michigan Public Service Commission, Section 106 Review by the Michigan State Historic Preservation Office and a Wild and Scenic River Determination from the USDA Forest Service.

The USDA Forest Service is serving as lead federal agency for the preparation of an EIS that will evaluate the purpose, need, and routing alternatives on the Hiawatha National Forest for the proposed project. The decision to be made is whether to allow the use of portions of the Hiawatha National Forest for siting a transmission line facility. The USDA Forest Service has invited other affected agencies to participate in the environmental process. Preliminary issues associated with this proposal include construction across two designated wild and scenic rivers, aesthetic effects, health and safety concerns from electromagnetic fields, impacts to wetlands from construction and effective wetland restoration, disturbances to threatened, endangered and sensitive plant and animal habitat, noxious weed control, recreation access to roads, rivers, and trails during construction and the commitment of forest resources over the long term.

The public is invited to attend meetings to be held June 17, 18, and 19, 1997, from 7:00 p.m. to 9:00 p.m. at the township hall in Nahma, the Omni Center in Rapid River, and the township hall in Cooks, Michigan, respectively. In additional meeting will be held June 17 at the Nahma township hall from 11:00 a.m. to 1:00 p.m. The purpose of the workshop-style meetings, is to share project information and identify public issues and concerns. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, written comments on the proposal should be as specific as possible. Please note that written comments made on the proposal will be regarded as public information. Anticipated publication date for the Draft EIS is November 1997 and the Final EIS in early 1998.

Dated: June 5, 1997.

William F. Spinner,

Forest Supervisor.

[FR Doc. 97–15234 Filed 6–10–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Exceptions to IC/DV Procedures; Correction

ACTION: Proposed collection; correction.

SUMMARY: The Department of Commerce, Bureau of Export Administration published a document in the **Federal Register** of May 1, 1997 (62 FR 23757) concerning a request for comments on a collection of information. The document contained an incorrect OMB control number.

FOR FURTHER INFORMATION CONTACT: Stephen Baker, (202) 482–3673.

Correction

In the **Federal Register** issue of May 1, 1997, on page 23757, in the third column, correct the OMB Number to read: 0694–0001.

Dated: June 5, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–15169 Filed 6–10–97; 8:45 a.m.]

BILLING CODE 3510–33–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 suspension of 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 section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), 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 June 1997, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period
Antidumping Proceedings	
BELGIUM: Sugar, A–423–077	6/1/96–5/31/97
CANADA: Oil Country Tabular Goods, A–122–506	6/1/96–5/31/97
CANADA: Raspberries, A–122–401	6/1/96–5/31/97
FRANCE: Calcium Aluminate Flux, A–427–812	6/1/96–5/31/97
FRANCE: Large Power Transformers, A–427–030	6/1/96–5/31/97
FRANCE: Sugar, A–427–078	6/1/96–5/31/97
GERMANY: Industrial Belts, except Synchronous & V-Belts, A–428–802	6/1/96–5/31/97
GERMANY: Precipitated Barium Carbonate, A–428–061	6/1/96–5/31/97
GERMANY: Rayon Yarns, A–428–810	6/1/96–5/31/97

	Period
GERMANY: Sugar, A–428–082	6/1/96–5/31/97
HUNGARY: Tapered Roller Bearings, A–437–601	6/1/96–5/31/97
ITALY: Large Power Transformers, A–475–031	6/1/96–5/31/97
ITALY: Synchronous and V-Belts, A–475–802	6/1/96–5/31/97
JAPAN: Fishnetting, A–588–029	6/1/96–5/31/97
JAPAN: Forklift Trucks, A–588–703	6/1/96–5/31/97
JAPAN: Grain-Oriented Electrical Steel, A–588–831	6/1/96–5/31/97
JAPAN: Industrial Belts, A–588–807	6/1/96–5/31/97
JAPAN: Large Power Transformers, A–588–032	6/1/96–5/31/97
JAPAN: Nitrile Rubber, A–588–706	6/1/96–5/31/97
JAPAN: PET Film, A–588–814	6/1/96–5/31/97
NEW ZEALAND: Kiwifruit, A–614–801	6/1/96–5/31/97
ROMANIA: Tapered Roller Bearings, A–485–602	6/1/96–5/31/97
RUSSIA: Ferrosilicon A–821–804	6/1/96–5/31/97
SINGAPORE: V-Belts, A–559–803	6/1/96–5/31/97
SOUTH AFRICA: Furfuryl Alcohol, A–791–802	6/1/96–5/31/97
SWEDEN: Stainless Steel Plate, A–401–040	6/1/96–5/31/97
TAIWAN: Carbon Steel Plate, A–583–080	6/1/96–5/31/97
TAIWAN: Oil Country Tubular Goods, A–583–505	6/1/96–5/31/97
TAIWAN: Stainless Steel Butt-Weld Pipe Fittings, A–583–816	6/1/96–5/31/97
TAIWAN: Washers, A–583–820	6/1/96–5/31/97
THE NETHERLANDS: Aramid Fiber, A–421–805	6/1/96–5/31/97
THE PEOPLE'S REPUBLIC OF CHINA: Furfuryl Alcohol, A–570–835	6/1/96–5/31/97
THE PEOPLE'S REPUBLIC OF CHINA: Silicon Metal, A–570–806	6/1/96–5/31/97
THE PEOPLE'S REPUBLIC OF CHINA: Sparklers, A–570–804	6/1/96–5/31/97
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings, A–570–601	6/1/96–5/31/97
VENEZUELA: Ferrosilicon, A–307–807	6/1/96–5/31/97
Countervailing Proceedings	
ITALY: Grain-Oriented Electrical Steel, C–475–812	1/1/96–12/31/96

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 C.F.R. 355.22(a) of the regulations, an interest party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Interim Regulations, 60 FR 25130, 25137 (May 11, 1995)). 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 for 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 B–099, 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 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party of 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 June 1997. If the Department does not receive, by the last day of June 1997, 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 4, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–15288 Filed 6–10–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Notice of Amendment of Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment of final results of antidumping duty administrative review.

SUMMARY: We are amending our final results of administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom, published on April 17, 1997, to reflect

the correction of ministerial errors made in the margin calculation in those final results. We are publishing this amendment to the final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1996, we published the preliminary results of our administrative review of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom (61 FR 65022). We published the final results of review on April 17, 1997 (62 FR 18744). On May 1, 1997, we received a timely allegation from respondent, British Steel Engineering Steels Limited (BSES), alleging that the Department made ministerial errors in the final results.

Scope of Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

Amended Final Results

On May 1, 1997, BSES alleged that the Department of Commerce (the Department) committed ministerial errors in calculating the final antidumping duty margin. BSES argues that, in calculating constructed value (CV) profit, the Department made a ministerial error in failing to ensure that the profit ratio and the value by which the ratio was multiplied shared the same basis. BSES argues that the Department overstated the CV profit by including direct selling expenses, indirect selling expenses, and packing in ''CVPROFIT,'' the value by which the profit ratio (''PRATE2CV'') was multiplied, but excluding those expenses from the total cost of production used in the denominator of the profit ratio. In order to ensure that denominator ''TOTHMCOP'' of the profit ratio and value ''CVPROFIT'' shared the same basis, BSES suggests that the Department either delete such expenses from ''CVPROFIT'' or include them in the denominator ''TOTHMCOP.''

We agree with BSES that the Department made a ministerial error by inadvertently excluding direct selling expenses, indirect selling expenses and packing expenses in the calculation of CV profit. These items should have been included. Furthermore, we note that we erred by deducting these expenses from gross price before the comparison of gross price with cost of production. Therefore, we have excluded these expenses from the net cost of production, ''NPRICOP,'' and have added them to the total cost of production, ''TOTCOP,'' for these amended final results.

Second, BSES alleges that, in the calculation of CV, the Department understated imputed credit and inventory carrying costs. BSES points out that the Department calculated credit and inventory carrying costs for CV by first creating CV credit and inventory carrying costs ratios. The Department then multiplied the ratios by total CV to yield the unit values of CV credit and inventory carrying costs. BSES argues that, since the denominator of the ratios was on a different basis than total CV (the value by which the ratio was multiplied), the results of the calculations were understated. BSES claims that the Department normally creates these variables by weight-averaging values from above-cost home market sales. As support for its argument, BSES cites our Final Results Analysis memorandum of April 9, 1997, where the Department states that ''we weighted-averaged the variables, including credit and inventory carrying costs.'' BSES notes that the total CV (''TOTCV'') does not include movement expenses, while the home market total unit price (''HMTOTUPR''), which serves as the denominator of the imputed credit and inventory carrying costs ratios, does include movement expenses. BSES argues that the resulting unit values for credit and inventory carrying costs are therefore understated. BSES suggests that the Department correct this error by using the Department's standard weighted-average method; alternatively, BSES suggests, if the Department continues to use the ratio, the Department may correct its error by either deducting movement expenses from the denominator ''HMTOTUPR'' or by adding the movement expenses to ''TOTCV.''

We agree that the Department made a ministerial error as it intended to calculate a weighted-average of the listed variables including credit and inventory carrying costs. *See* Final Analysis memorandum dated April 9, 1997. Therefore, we have revised the margin calculation program by replacing ''SUM'' with ''MEAN'' at line 441, and deleting lines 454, 455, 456, 457, 1009, 1010, 1014, and 1015.

Amended Final Results of Review

Upon review of the submitted allegation, the Department has determined that the following margin exists for the period March 1, 1995 through February 29, 1996.

Manufacturer/Exporter	Period of Review	Margin (percent)
British Steel Engineering Steels Limited (BSES) (formerly United Engineering Steels Limited)	3/1/95–2/29/96	4.52

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. Because there is a concurrent review of the countervailing duty order on the subject merchandise, final assessments for BSES will reflect the final results of the countervailing duty administrative review in accordance with section 772(c)(1)(C) of the Act. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of amended final results of review for all shipments of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 25.82 percent, the ''all others'' rate established in the LTFV investigation (58 FR 6207, January 27, 1993). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 30, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–15289 Filed 6–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–810

Certain Welded Stainless Steel Pipe from Korea; Initiation of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: In response to a request from SEAH Steel Corporation (SEAH), the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review of the antidumping duty order on certain welded stainless steel pipe from Korea. *See Notice of Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipe From Korea,* 60 FR 10064 (February 23, 1995). *See* also *Antidumping Duty Order and Clarification of Final Determination; Certain Welded Stainless Steel Pipe from Korea,* 57 FR 62301, (December 30, 1992).

SEAH requested that the Department determine that SEAH is the successor firm to Pusan Steel Pipe (PSP). During the less-than-fair-value (LTFV) investigation, PSP was assigned a cash deposit rate of 2.67 percent. *See Antidumping Duty Order and Clarification of Final Determination; Certain Welded Stainless Steel Pipe from Korea,* 57 FR 62301 (December 30, 1992). SEAH's request is filed pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Tariff Act).

We are initiating an antidumping duty changed circumstances administrative review of the antidumping duty order on certain welded stainless steel pipe from Korea to determine whether or not SEAH is the successor firm to PSP, and to determine whether SEAH is entitled to PSP's cash deposit rate.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1997, SEAH requested that the Department conduct a changed circumstances administrative review pursuant to section 751(b) of the Tariff Act to determine whether SEAH should properly be considered the successor firm to PSP and if, as such, SEAH should be entitled to PSP's cash deposit rate.

According to SEAH, PSP legally changed its name to SEAH on December 28, 1995, which change became effective on January 1, 1996. SEAH claims that its name change from PSP was a change in name only, and that the legal structure of the company, its management, and ownership were not affected by the name change. SEAH also claims that it is a part of a larger group of related companies, certain members of which had SEAH in their names prior to January 1, 1996.

In its request for a changed circumstances review, SEAH indicated that PSP had acquired certain production assets formerly owned by Sammi Metal Products Co (Sammi). SEAH asserts that the acquisition, which occurred more than a year before the name change and was effective January 3, 1995, is not related to the name change. SEAH claims that its acquisition of the products and facilities of Sammi is functionally no different from PSP expanding its existing facilities or contracting a new manufacturing facility.

The Department has examined SEAH's request for a changed circumstances administrative review and has determined that the facts before the Department will require further investigation.

On May 13, 1997, SEAH also requested that the Department publish concurrently its notice of initiation and preliminary results of changed circumstances review. On May 23, 1997, petitioners submitted a letter objecting to the concurrent issuance of a notice of initiation and preliminary results of changed circumstances review. Petitioners' objection is based on the complexity of the facts, and the inability of counsel to obtain proprietary documents submitted by SEAH until after an initiation. For these reasons, and because we are considering whether to seek additional information and want petitioners to have an opportunity to comment, the Department has determined that it would not be appropriate to issue our preliminary results of a changed circumstances review at this time.

Scope of the Review

The merchandise subject to this antidumping duty order is welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of this order also includes WSSP made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines. Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065 and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this antidumping duty order is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

This changed circumstances administrative review covers SEAH and any parties affiliated with SEAH.

Initiation of Changed Circumstances Antidumping Duty Order Administrative Review

Pursuant to section 751(b) of the Tariff Act, the Department will conduct a changed circumstances administrative review upon receipt of information concerning, or a request from an interested party of an antidumping duty order which shows, changed circumstances sufficient to warrant a review of the order. *See* section 751(b)(1). In accordance with section 751(b) and 19 CFR 353.22(f)(1)(i), we are initiating a changed circumstances administrative review based upon the information contained in SEAH's March 27, 1997 request for this review.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review, in accordance with 19 CFR 353.22(f)(1)(v), which will set forth the factual and legal conclusions upon which our preliminary results are based. Not later than 270 days after publication of this notice of initiation, the Department will issue its final results of review. All written comments must be submitted in accordance with 19 CFR 353.31(e) and must be served on all interested parties on the Department's service list in accordance with 19 CFR 353.31(g).

This notice is in accordance with section 751(b)(1) of the Tariff Act and section 353.22(f)(1)(i) of the Department's regulations.

Dated: June 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–15290 Filed 6–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060297C]

An Evaluation of Potential Shrimp Virus Impacts on Cultured Shrimp and on Wild Shrimp Populations in the Gulf of Mexico and Southeastern U.S. Atlantic Coastal Waters

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce, on behalf of the Joint Subcommittee on Aquaculture.

ACTION: Advance notice of a proposed shrimp virus risk assessment and public meetings.

SUMMARY: The Joint Subcommittee on Aquaculture (JSA); Office of Science and Technology Policy, is releasing a report describing the potential impacts of shrimp viruses on cultured shrimp and on wild shrimp populations in the Gulf of Mexico and southeastern U.S. Atlantic coastal waters. Comments received in writing, or at public meetings, will be used to help develop plans for an ecological risk assessment on shrimp viruses.

DATES: Consideration will be given to only to those comments received on or before August 11, 1997. In addition, comments may be provided at any of three public meetings to be held. See **SUPPLEMENTARY INFORMATION** section for further details regarding these meetings.

ADDRESSES: Copies of a report prepared for the JSA entitled, ''An Evaluation of Shrimp Virus Impacts on Cultured Shrimp and on Wild Shrimp Populations in the Gulf of Mexico and Southeastern U.S. Atlantic Coastal Waters'' (the shrimp virus report) may be obtained by contacting NMFS Assistant Administrator's Office of Industry and Trade, at:301–713–2379 or by accessing the NMFS Home Page, at: http://kingfish.ssp.nmfs.gov/oit/oit.html. To help ensure that written comments are considered, send an original and three copies to Mr. Jerome Erbacher, Office of Industry & Trade, Room 3675, SSMC3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or facsimile to (301) 713–2384. To attend any of the public meetings, contact the Eastern Research Group, Inc. (ERG), Conference Registration Line,(617) 674–7374.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Thomas McIlwain, Chairperson of the JSA Shrimp Virus Work Group, NMFS, 3209 Frederick Street, Pascagoula, MS 39567, (601) 762–4591 or Dr. Thomas C. Siewicki, 219 Ft. Johnson Road, Charleston SC 29412, (803)762-8534.

SUPPLEMENTARY INFORMATION: Evidence suggests that exotic shrimp viruses may be inadvertently introduced into U.S. coastal regions. If established, these introduced viruses have the potential to infect both wild shrimp stocks and shrimp in aquaculture through a number of different pathways. Two potentially significant pathways involve the shrimp aquaculture and shrimp processing industries. Though considered less significant, examples of other potential pathways include bait shrimp, ship ballast water, research and

display, translocated animals (non-shrimp), and natural spread (e.g., migratory birds, large scale currents, flooding).

In 1995, Taura Syndrome Virus (TVS) was documented in shrimp culture ponds in Texas. After the Texas outbreak, ponds were restocked with shrimp seed native to the Gulf of Mexico. However, some of the shrimp in the second stocking were later found infected with other pathogenic viruses (e.g., White Spot Syndrome Virus (WSSV) and Yellow Head virus (YHV), only previously identified in shrimp imported from the far east. In 1996, a repeat outbreak of TSV was documented. In 1997, YHV and WSSV were identified (based on very limited data) in South Carolina. These outbreaks have raised concerns that viruses could be spread from aquaculture facilities to the wild shrimp stocks in U.S. coastal waters, with potentially serious implications.

To determine the likelihood and the potential impacts of exotic shrimp viruses on wild shrimp populations in the Gulf of Mexico and Southeastern U.S. Atlantic Coastal Waters and on cultured shrimp in aquaculture in these areas, the JSA has decided to conduct an ecological risk assessment. (The JSA consists of representatives from several Federal organizations, including the National Marine Fisheries Service, U.S. Department of Agriculture, U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency). In support of information exchange and education, and to determine any necessary course of action to avert the introduction of pathogenic viruses, the JSA tasked a Federal interagency work group (Shrimp Virus Work Group; SVWG) with identifying research on shrimp viruses, the mode of virus transmission, and the potential for the introduction of these viruses into the Gulf of Mexico and Southeastern U.S. Atlantic Coastal Waters. The SVWG helped to organize and participated in a shrimp virus workshop in New Orleans, LA, in June 1996. Recently, the SVWG prepared a shrimp virus report that summarizes readily-available risk-relevant information on shrimp viruses. This report has been approved by the JSA and is available to the public for comment.

Comments on the shrimp virus report received from the public (whether in writing or at the public meetings) will be used as input to a workshop that will help finalize plans for conducting a shrimp virus ecological risk assessment.

Meeting Locations and Times : July 15, in Charleston, South Carolina; July 21, in Mobile, Alabama; and July 23, in Brownsville, Texas. There is no charge for attending the public meetings listed above; however, seats are limited, so it is advisable to register as soon as possible. Participants wishing to make comments or address issues can register with ERG prior to the workshop, or on site. Each participant will be assigned a time slot on a first-come, first-served basis. Individual comments should be limited to 3 to 5 minutes; additional or lengthy comments may be submitted in writing to the address provided above.

Dated: June 5, 1997.

Rolland Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–15241 Filed 6–10–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060497A]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Stone Crab Advisory Panel (AP).

DATES: This meeting will be held on July 7, 1997, from 8:00 a.m. to 2:00 p.m.

ADDRESSES: This meeting will be held at the Monroe County Regional Service Center, 2798 Overseas Highway, Marathon, FL; telephone: 305–743–6727.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review effort and landing trends in the fishery and continue development of recommendations for a limited access system and the structure of such a system.

The AP is comprised of fishermen and other user groups who advise the Council on fishery issues.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 30, 1997.

Dated: June 5, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–15243 Filed 6–10–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060497B]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold a public meeting.

DATES: The meeting will be held on June 25, 1997, the Council will meet from 10:00 a.m. until approximately 5:00 p.m. On June 26, 1997, the Council will meet from 8:00 a.m. until approximately noon.

ADDRESSES: The meeting will be held at the Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779; telephone: 516-585-9500.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review proposed Federal regulations to implement the Magnuson-Stevens Act, discuss and possibly adopt for Secretarial approval the Monkfish Fishery Management Plan, and other fishery management matters.

The above agenda items may not be taken in the order in which they appear and are subject to change as necessary; other items may be added. This meeting may also be closed at any time to discuss employment or other internal administrative matters.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 5, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–15242 Filed 6–10–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Modernization Transition Committee (MTC); Meeting

ACTION: Notice of public meeting.

TIME AND DATE: June 25, 1997 from 8:00 a.m. to 4:30 p.m.

PLACE: This meeting will take place at the Silver Spring Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland.

STATUS: The meeting will be open to the public. The time between 10:30 a.m. to 11:15 a.m. will be set aside for oral comments or questions from the public. Approximately 50 seats will be available on a first-come first-served basis for the public.

MATTERS TO BE CONSIDERED: This meeting will cover: Consultation on 10 combined Consolidation and Automation Certifications, 4 combined Consolidation, Automation and Closure Certifications, and 3 Consolidation Certifications; update on the Service Level D Automation criteria; and an update on the NWS and Astoria community interactions.

CONTACT PERSON FOR MORE INFORMATION: Mr. Nicholas R. Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Dated: June 5, 1997.

Nicholas R. Scheller,

Manager, National Implementation Staff.

[FR Doc. 97–15218 Filed 6–10–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060497D]

North Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: Two meetings have been scheduled in July to begin preparation of an essential fish habitat (EFH) assessment document for the fisheries off Alaska, as mandated by the recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Technical teams for Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfish will meet July 8–9, 1997, in Seattle, WA, beginning at 1:00 p.m. on July 8. On July 15–17, 1997, the EFH Core Team will meet in Juneau, AK, beginning at 8:00 a.m. on July 15.

ADDRESSES: The groundfish technical teams will meet July 8–9 in Seattle, WA, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Room 2079.

The EFH Core Team will meet July 15–17 in Juneau, AK, at the NMFS Alaska Regional Office, 709 W. 9th Street, Room 142A-B.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, telephone: 907–586–7585.

SUPPLEMENTARY INFORMATION:

1. The Groundfish Technical Teams for BSAI and GOA groundfish will prepare a preliminary EFH assessment document.

2. The EFH Core Team will review the preliminary EFH assessment document and discuss preparation of EFH amendments for the fishery management plans (FMPs) for BSAI and GOA groundfish, BSAI crab, and for the FMPs for scallops and salmon.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann, 907–586–7585, at least 5 working days prior to the meeting date.

Dated: June 5, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–15239 Filed 6–10–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060497C]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council meeting will be held June 23–25, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Red Lion Hotel-Seattle Airport, 18740 Pacific Highway South, Seattle, WA 98188; telephone: (206) 246–8600.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: Various advisory groups will be meeting on Monday, June 23. The Council meeting will begin on Monday, June 23, at 1 p.m. with an open session. The Council meeting reconvenes on Tuesday, June 24, at 8 a.m. On Wednesday, June 25, the Council will convene in a closed session (not open to the public) to discuss litigation and personnel matters. The open session begins at 8:30 a.m. and will adjourn when Council business has been completed.

The following items are on the Council agenda:

A. Call to Order

B. Proposed Rules Implementing Magnuson-Stevens Fishery Conservation and Management Act

1. Agency Report

2. Comments of Advisory Entities and Public

3. Council Comments

C. Salmon Management
1. Statement of Chair Concerning 1997 Process
2. Sequence of Events and Status of Fisheries
3. Plans for Workshop on Chinook Models
4. Procedure for Review and Revision of Salmon Methodologies
5. Plan Amendments
D. Dungeness Crab Management
1. Report of the Ad Hoc Scoping Committee
2. Scientific and Statistical Committee (SSC) and Public Comments
3. Determine Need for Federal Management - ACTION
E. Coastal Pelagic Species Management
1. Need for Federal Management
2. Anchovy Biomass Estimate and Quotas for 1997–1998
F. Habitat Issues
1. Report of the Steering Group
2. Public Comments
3. Council - ACTION
G. Groundfish Management
1. Fixed Gear Sablefish Management in 1997
2. Fixed Gear Sablefish Management in 1998 and Beyond
3. Control Date for Potential Fixed Gear Sablefish Individual Quota Program
4. Status of Federal Regulations
5. Status of Fisheries and Inseason Adjustments
6. Scoping Process for Plan Amendments
7. Capacity Reduction Program
H. Administrative and Other Matters
1. Report of the Budget Committee
2. Status of Legislation
3. Report of the Council Chairs' Meeting
4. Approve September 1997 Agenda - ACTION
5. Appointments to Advisory Groups - ACTION
6. Council Comments on Draft NMFS Report on California Sea Lions and Harbor Seals - ACTION

Other Meetings

SCHEDULE OF ADVISORY GROUP/ COMMITTEE MEETINGS

MONDAY, JUNE 23, 1997 Time

Secretarial Center 8 a.m., June 23–25
Groundfish Management Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Habitat Steering Group 10 a.m.
Groundfish Advisory Subpanel 1 p.m.
Budget Committee After Council Session
Enforcement Consultants 7 p.m.
Buyback Committee 7 p.m.

TUESDAY, JUNE 24, 1997

Groundfish Advisory Panel (GAP) 8 a.m.
SSC 8 a.m.

WEDNESDAY, JUNE 25, 1997

GAP 7 a.m. (If necessary)

Detailed agendas for the above advisory meetings will be available after June 13, 1997.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: June 5, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–15240 Filed 6–10–97; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, June 19, 1997, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 9, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–15446 Filed 6–9–97; 2:16 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force is amending the system identifiers, the system names, and the Preamble to the Air Force's compilation of Privacy Act Systems of Records Notices. The system identifiers reflect the current numbering system used by the Secretary of the Air Force.

DATES: The amendments will be effective on June 11, 1997.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Rollins at (703) 697–8674 or DSN 227–8674.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below.

Dated: June 5, 1997.

L. M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

UNITED STATES AIR FORCE

How Systems of Records are Arranged

In the Air Force, records are grouped by subject series. Each series has records about a specific activity or function to which a subject title and number is given. Systems of records are grouped in the same way. For example, a system of records on personnel security clearances may be found in 'Security - 31,' and one about psychiatry in 'Medical Service - 44.' These numbers are part of the system identification which precede the notices. They look like this: F031 AF SP A or F044 AFSG A. The letter 'F' means Air Force. The first three digits (031 and 044) show that the records pertain to Security and the Medical Service respectively. The letters that follow indicate to whom the system applies and/or the Office of Primary Responsibility (OPR). For example, in system F031 AF SP A, AF indicates that this is an Air Force-wide system, with SP denoting Security Police as the OPR. The last alpha designation is for internal management control. In the records system F044 AFSG A, (without a space

between the AF and SG) indicates this is a Surgeon General System and applies to the office of the Surgeon General only.

Using the Index Guide

The systems of records maintained by the Air Force are contained within the subject series that are listed below.

This list identifies each series in the order in which it appears in this issuance. Use the list to identify subject areas of interest. Having done so, use the series number (for example 031 for Security) to locate the systems of records grouping in which you are interested.

System Identification Series
Subject Series

Flying Operations
011
Maintenance
021
Supply
023
Transportation
024
Security
031
Civil Engineering
032
Communications
033
Services
034
Public Affairs
035
Personnel
036
Manpower and Organization
038
Medical
044
Law
051
Chaplain
052
Scientific/Research Development
061
Finance Management
065
Special Investigations
071
Command Policy
090
Safety
091

DEPARTMENT OF THE AIR FORCE PRIVACY ACT SYSTEMS OF RECORDS NOTICES

System Identifier		System Name
From:	To:	
F010 AF A	F033 AF CIC A	Automated Orders Data System
F010 AFIS B	F036 497IG A	Prisoner of War (PW) Debriefing Files
F010 ARPC A	F033 ARPC A	Background Material
F010 AU A	F036 AETC V	Potential Faculty Rating System
F010 CVAE A	F033 CVAE A	Secretary of the Air Force Historical Records
F010 RE A	F033 AFRE A	Inquiries (Presidential/Congressional)
F011 AF A	F033 AF CIC D	Locator, Registration and Postal Directory Files
F011 AF B	F034 AF SVA E	Check Cashing Privilege Files
F011 AF MP A	F033 AF PC A	Congressional and Other High Level Inquiries
F011 AFA A	F036 USAFA D	Class Committee Products
F011 AFA B	F036 USAFA E	Faculty Biographical Sketch
F011 AF SG A	F033 AFSG A	High Level Inquiry File
F011 ARPC A	F033 ARPC B	Locator or Personnel Data
F011 LLI A	F033 SAFLL A	Congressional/Executive Inquiries
F011 SG A	F033 AFSG B	Professional Inquiry Records System
F012 AF A	F033 AF CIC B	Information Requests-Freedom of Information Act
F012 AF B	F033 AF CIC C	Privacy Act Request File
F021 AFSPC A	F021 AFSPC A	Cable Affairs Personnel/Agency Records
F030 AF A	F036 AF CIC A	Biographical Data and Automated Personnel Management System
F030 AF JA A	F051 AF JA B	Confidential Financial Disclosure Report
F030 AF LE A	F032 AF CE A	Equal Opportunity in Off-Base Housing
F030 AF LE B	F032 AF CE B	Off-Base Housing Referral Service
F030 AF LE C	F032 AF CE C	Base Housing Management
F030 AF LE D	F032 AF CE D	On/Off-Base Housing Records
F030 AF MP A	F036 AF PC Q	Personnel Data System (PDS)
F030 AF MP B	F044 AF DP B	Substance Abuse Reorientation and Treatment Case Files
F030 AF MP C	F036 AF PC R	Casualty Files
F030 AF MP D	F036 AF PC S	Contingency Operations System (COMPES)
F030 AF MP E	F044 AF DP A	Drug Abuse Waiver Requests
F030 AF SG A	F044 AFSG A	Aerospace Physiology Personnel Career Information System
F030 AF SP A	F031 AF SP O	Documentation for Identification and Entry Authority
F030 AFISA A	F036 497IG B	For Cause Discharge Program
F030 AFIS C	F031 497IG D	Intelligence Applicant Files
F030 ARPC A	F036 ARPC H	Applications for Identification (ID) Cards
F030 ARPC B	F036 ARPC I	Point Credit Accounting Record System (PCARS)
F030 MPC A	F036 AFPC A	Deceased Service Member's Dependent File
F030 MPC B	F036 AFPC C	Indebtedness, Nonsupport Paternity
F030 SG A	F044 AFSG B	Bioenvironmental Engineer Personnel Career Information System
F030 SG B	F044 AFSG C	Aerospace Medicine Personnel Career Information System
F033 AETC A	F036 AETC A	Lead Management System (LMS)
F035 AF A	F036 AFCA A	Officer Quality Force Management Records
F035 AF DP A	F036 AF DP A	Family Support Center (FSC) Accountability and Data Collection System
F035 AF DP B	F036 AF DP B	Colonels Assignment File
F035 AF MP A	F036 AF PC A	Effectiveness/Performance Reporting Systems
F035 AF MP B	F036 AF PC B	Geographically Separated Unit Copy Officer Effectiveness/Airman Performance Report
F035 AF MP C	F036 AF PC C	Military Personnel Records System
F035 AF MP D	F036 AF PC D	Officer Performance Report (OPR)/Enlisted Performance Report (EPR) Appeal Case Files
F035 AF MP E	F036 AF PC E	United States Air Force (USAF) Airman Retraining Program

DEPARTMENT OF THE AIR FORCE PRIVACY ACT SYSTEMS OF RECORDS NOTICES—Continued

System Identifier		System Name
From:	To:	
F035 AF MP F	F036 AF PC F	Request for Selective Reenlistment Bonus (SRB) and/or Advance Payment of SRB
F035 AF MP G	F036 AF PC G	Selective Reenlistment Consideration
F035 AF MP H	F036 AF PC H	Air Force Enlistment/Commissioning Records System
F035 AF MP I	F036 AF PC I	Incoming Clearance Records
F035 AF MP J	F036 AF PC J	Absentee and Deserter Information Files
F035 AF MP K	F036 AF PC K	Relocation Preparation Project Folders
F035 AF MP L	F036 AF PC L	Unfavorable Information Files (UIF)
F035 AF MP M	F036 AF PC M	Officer Promotion and Appointment
F035 AF MP N	F044 AF PC A	Individual Weight Management File
F035 AF MP O	F036 AF PC N	Unit Assigned Personnel Information
F035 AF MP P	F036 AF PC O	General Officer Personnel Data System
F035 AF MP R	F036 AF PC P	Application for Appointment and Extended Active Duty Files
F035 AF MP S	F044 AF SG N	Physical Fitness File
F035 AFA A	F036 USAFA A	Cadet Personnel Management System
F035 AFA B	F036 USAFA B	Master Cadet Personnel Record (Active/Historical)
F035 AFA C	F036 USAFA C	Prospective Instructor Files
F035 AFOSI B	F036 AFOSI A	Career Development Folder
F035 AFOSI C	F036 AFOSI B	Informational Personnel Records
F035 AFOSI D	F036 AFOSI C	Internal Personnel Data System
F035 AFRES A	F036 AFRES A	Personnel Interview Record
F035 AFRES B	F036 AFRES B	Recruiters Automated Management System (RAMS)
F035 AFMC A	F036 AFMC A	Personnel Management Information System for Air Force Materiel Command (AFMC) Commanders
F035 ARPC A	F036 ARPC A	Administrative Discharge for Cause on Reserve Personnel
F035 ARPC B	F036 ARPC B	Informational Personnel Management Records
F035 ARPC C	F036 ARPC C	Correction of Military Records of Officers and Airmen
F035 ARPC D	F036 ARPC D	Data Change/Suspense Notification
F035 ARPC E	F036 ARPC E	Flying Status Actions
F035 ARPC G	F036 ARPC F	Officer Promotions
F035 ARPC I	F036 ARPC G	Requests for Discharge from the Air Force Reserve
F035 AETC B	F036 AETC B	Air Force Junior ROTC (AFJROTC) Applicant/Instructor System
F035 AETC C	F036 AETC C	Air Force Reserve Officer Training Corps Qualifying Test Scoring System
F035 AETC D	F036 AETC D	Basic Trainee Interview Record
F035 AETC G	F036 AETC E	Recruiting Activities Management Support System (RAMSS)
F035 AETC H	F036 AETC F	Recruiting Research and Analysis System
F035 AETC I	F036 AETC G	Status of Ineffective Recruiter
F035 AETC J	F044 AETC A	Drug Abuse Control Case Files
F035 AETC K	F036 AETC H	Processing and Classification of Enlistees (PACE)
F035 HC A	F052 AFHC A	Chaplain Information Sheet
F035 HC B	F052 AFHC B	Chaplain Personnel Record
F035 HC C	F052 AFHC C	Chaplain Personnel Action Folder
F035 HC D	F052 AFHC D	Chaplain Applicant Processing Folder
F035 HC E	F052 AFHC E	Assignment Action File
F035 MP A	F036 AFDP A	Files on General Officers and Colonels Assigned to General Officer Position
F035 MP B	F036 AFRE A	Statutory Tour Program
F035 MPC B	F036 AFPC B	Civilian/Military Service Review Board
F035 MPC D	F036 AFPC D	Correction of Military Records System
F035 MPC E	F036 AFPC E	Disability Retirement Records
F035 MPC F	F036 AFPC F	Health Education Records
F035 MPC G	F036 AFPC G	Medical Officer Personnel Utilization Records
F035 MPC H	F036 AFPC H	Medical Opinions on Board for Correction of Military Records Cases (BCMR)
F035 MPC J	F036 AFPC I	Airmen Utilization Records System
F035 MPC K	F036 AFPC J	Promotion Documents/Records Tracking (PRODART) and Airman Promotion Historical Records (APHR) System
F035 MPC L	F036 AFPC K	Historical Airman Promotion Master Test File (MTF)
F035 MPC P	F036 AFPC L	Recorder's Roster
F035 MPC Q	F036 AFPC M	Officer Utilization Records System
F035 MPC R	F036 AFPC N	Air Force Personnel Test 851, Test Answer Sheets
F035 MPC S	F036 AFPC O	Aviation Service Historical Data File
F035 MPC U	F036 AFPC P	Separation Case Files (Officer and Airman)
F035 RE A	F036 AFRE B	Personnel Files on Statutory Tour Officers
F035 RE B	F036 AFRE C	Files on Reserve General Officers; Colonels Assigned to General Officer Positions
F035 SAFCB A	F036 SAFCB A	Military Records Processed by the Air Force Correction Board
F035 SAFPA A	F035 SAFPA B	Mobilization Augmentee Training Folders
F035 SAFPC A	F036 SAFPC A	Air Force Discharge Review Board Retain Files
F035 SAFPC B	F036 SAFPC B	Air Force Discharge Review Board Original Case Files
F035 SAFPC C	F036 SAFPC C	Air Force Discharge Review Board Voting Cards
F035 SAFPC D	F036 SAFPC D	Air Force Discharge Review Board Case Control/Locator Cards
F035 SG A	F044 AFSG D	Application for Aeronautical Rating (Senior and Chief Flight Surgeon)
F035 SG B	F044 AFSG E	Medical Service Corps Personnel Files

DEPARTMENT OF THE AIR FORCE PRIVACY ACT SYSTEMS OF RECORDS NOTICES—Continued

System Identifier		System Name
From:	To:	
F035 SG C	F044 AFSG F	Veterinary Personnel Files
F036 AFMC D	F036 AFMC D	Education/Training Management System (ETMS)
F040 AA A	F036 SAFAA A	Civilian Personnel Files
F040 AF DP A	F044 AF SG I	Civilian Employee Drug Testing Records
F040 AF MP H	F036 AF DP F	Employee Assistance Program Case Record Systems
F040 AF MP J	F036 AF PC T	Civilian Appeal and Grievance System
F040 AF NAFI A	F034 AF SVA A	Non-Appropriated Fund (NAF) Civilian Personnel Records
F040 AF NAFI B	F034 AF SVA B	Non-appropriated Fund (NAF) Civilian Personnel Records-Manpower
F040 AFAA A	F036 AFAA A	Merit Promotion File
F040 AFMC A	F036 AFMC C	Air Force Logistics Command (AFC) Senior Civilian Information File
F040 AFRES A	F036 AFRES C	Air Reserve Technician (ART) Officer Selection Folders
F040 ASG A	F036 AF DP E	Civilian Pay-Personnel-Manpower (PAPERMAN)
F045 AETC C	F036 AETC I	Cadet Records
F045 AFRES A	F036 AFRES D	Reserve Medical Service Corps Officer Appointments
F045 ARPC A	F036 ARPC J	Air Force Reserve Application
F045 ARPC B	F036 ARPC K	Inactive Duty Training, Extension Course Institute (ECI) Training
F045 ATC E	F036 AETC J	Four-Year Reserve Officer Training Corps (AFROTC) Scholarship Program Files
F045 MPC A	F036 AFPC Q	Educational Delay Board Findings
F050 ACC B	F036 ACC B	Operations Training Development Evaluation
F050 AETC A	F036 AETC K	Officer Training Group (OTG) Resource Management System - Officer Trainees
F050 AETC B	F036 AETC L	Community College of the Air Force Student Record System
F050 AETC I	F036 AETC O	Defense English Language Management Information System (DELMIS)
F050 AF A	F036 AETC R	Student Records
F050 AF MP A	F036 AF PC U	Education Services Program Records (Individual)
F050 AF SG A	F044 AF SG P	Nursing Skill Inventory
F050 AFA A	F036 USAFA F	Military Performance Average
F050 AFA B	F036 USAFA G	Instructor Academic Records
F050 AFA C	F036 USAFA H	Academy Athletic Records
F050 AFAA A	F036 AFAA B	Air Force Audit Agency Office Training File
F050 AFAA B	F036 AFAA C	Employee Training and Career Development File
F050 AFC4A A	F036 AFCA B	Individual Academic Training Records
F050 AFFSA A	F036 AFFSA A	USAF Air Traffic Control (ATC) Certification and Withdrawal Documentation
F050 AFIC A	F036 AFCA D	Training Progress
F050 AFOSI A	F036 AFOSI D	Air Force Special Investigations Academy Individual Academic Records
F050 AFRES A	F036 AFRES E	Undergraduate Pilot and Navigator Training
F050 AFMC A	F036 AFMC B	Systems Acquisition Schools Student Records
F050 AFSPACECOM A	F036 AFSPC A	Space Command Operations Training
F050 AMC A	F036 AMC A	Training Instructors (Academic Instructor Improvement/Evaluation)
F050 AMC B	F036 AMC B	Training Progress (Permanent Student Record)
F050 AMC C	F036 AMC C	Training Systems Research and Development Materials
F050 ARPC A	F036 ARPC L	Professional Military Education (PME)
F050 AU F	F036 AETC M	Air University Academic Records
F050 AU G	F036 AETC N	Student Record Folder
F050 AU J	F036 AETC P	Student Questionnaire
F050 AU K	F036 AETC Q	Institutional Research Analysis System
F050 SAFPA A	F035 SAFPA C	Graduates of Air Force Short Course in Communication (Oklahoma University)
F050 SAFPA B	F035 SAFPA D	Information Officer Short Course Eligibility File
F050 USAFE A	F036 USAFE A	Student Identification/Locator Card
F051 AF A	F036 AETC S	Flying Training Records
F051 AF B	F036 AETC T	Flying Training Records - Nonstudent
F051 AF C	F036 AETC U	Flying Training Records - Student
F051 AF JA A	F051 AF JA A	Judge Advocate General's Professional Conduct Files
F051 AMC A	F036 AMC D	Air Crew Instruction Records
F053 AFA A	F036 USAFA I	Educational Research Data Base
F053 AFA B	F036 USAFA J	Preparatory School Records
F053 AFA C	F036 USAFA K	Admissions Records
F053 MP A	F036 AFDP B	Air Force Academy Appointment and Separation Records
F055 ACC A	F011 ACC A	Air-to-Air Weapon System Evaluation Program
F060 AF A	F011 AF AMC A	Air Force Operations Resource Management Systems (AFORMS)
F060 AF B	F011 AF AFMC A	Contractor Flight Operations
F060 ANG A	F011 ANG A	Progress Report, Undergraduate Pilot Training
F066 AF A	F021 AF IL A	Core Automated Maintenance System (CAMS)
F067 AF A	F023 AF IL A	Government Furnishings Issue Records
F067 AF B	F023 AF IL B	Base Service Store/Tool Issue Center Access
F067 AF LE A	F023 AF IL C	Personal Clothing and Equipment Record
F067 AFMC A	F023 AFMC A	Equipment Maintenance Management Program (EMMP)
F070 AF AFO A	F065 AF AFC A	Accounts Payable Records
F075 AF DP A	F024 AF DP A	Application for Early Return of Dependents
F075 AF LE A	F024 AF IL A	Household Goods Nontemporary Storage System (NOTEMPS)
F075 AF LE B	F024 AF IL B	Personal Property Movement Records

DEPARTMENT OF THE AIR FORCE PRIVACY ACT SYSTEMS OF RECORDS NOTICES—Continued

System Identifier		System Name
From:	To:	
F075 USAFE A	F024 USAFE A	Customs Control Records
F076 AMC A	F024 AF AMC A	Passenger Reservation and Management System
F077 AF LE A	F024 AF IL C	Motor Vehicle Operators' Records
F080 AFMC A	F061 AFMC A	Aeromedical Research Data
F090 AF A	F032 AF CE E	Visiting Officer Quarters-Transient Airman Quarters Reservation
F090 AF B	F032 AF CE F	Unaccompanied Personnel Quarters Assignment/Termination
F100 AFC4A A	F033 AFCA A	Military Affiliate Radio System (MARS) Member Records
F110 AF JA A	F051 AF JA C	Legal Assistance Administration
F110 AF JA B	F051 AF JA D	Litigation Records (Except Patents)
F110 AFAFC H	F065 AFAFC L	Legal Administration Records of the Staff Judge Advocate
F110 AFRES A	F051 AFRES A	Reserve Judge Advocate Training Report
F110 JA A	F051 AFJA A	Freedom of Information Act Appeals
F110 JA B	F051 AFJA B	Invention, Patent Application, Application Security, and Patent Files
F110 JA C	F051 AFJA C	Judge Advocate Personnel Records
F110 JA D	F051 AFJA D	Patent Infringement and Litigation Records
F110 JA E	F051 AFJA E	Air Force Reserve Judge Advocate Personal Data
F110 USAFE A	F051 USAFE A	Civil Process Case Files
F111 AF JA A	F051 AF JA E	Automated Military Justice Analysis and Management System (AMJAMS)
F111 AF JA B	F051 AF JA F	Courts-Martial and Article 15 Records
F112 AF JA A	F051 AF JA G	Air Force Claims Information Management System (AFCIMS)
F112 AF JA B	F051 AF JA H	Claims Records
F120 AF IG A	F090 AF IG A	Inspector General Records - Freedom of Information Act
F120 AF IG B	F090 AF IG B	Inspector General Records
F123 AFISC A	F091 AFIA A	United States Air Force (USAF) Inspection Scheduling System
F124 AF A	F071 AF OSI A	Counterintelligence Operations and Collection Records
F124 AF B	F071 AF OSI B	Security and Related Investigative Records
F124 AF C	F071 AF OSI C	Criminal Records
F124 AF D	F071 AF OSI D	Investigative Support Records
F124 AFOSI A	F071 AF OSI E	Badge and Credentials
F124 AFOSI B	F071 AF OSI F	Investigative Applicant Processing Records
F125 AF A	F031 AF SP A	Correction and Rehabilitation Records
F125 AF SP A	F031 AF SP B	Air Force Policy Statement - Firearms Safety and Use of Force
F125 AF SP B	F031 AF SP C	Complaint/Incident Reports
F125 AF SP D	F031 AF SP D	Field Interview Card
F125 AF SP E	F031 AF SP E	Security Police Automated System (SPAS)
F125 AF SP F	F031 AF SP F	Notification Letters to Persons Barred From Entry to Air Force Installations
F125 AF SP G	F031 AF SP G	Pickup or Restriction Order
F125 AF SP H	F031 AF SP H	Provisional Pass
F125 AF SP I	F031 AF SP I	Registration Records (Excluding Private Vehicle Records)
F125 AF SP J	F031 AF SP J	Serious Incident Reports
F125 AF SP K	F031 AF SP K	Vehicle Administration Records
F125 AF SP L	F031 AF SP L	Traffic Accident and Violation Reports
F125 AFMC A	F031 AFMC A	AFMC Badge and Vehicle Control Records
F160 AF SG A	F044 AF SG A	USAF Hearing Conservation Record System
F160 AF SG B	F044 AF SG K	Medical Professional Staffing Records
F160 AF SG C	F044 AF SG L	Medical Treatment Facility Tumor Registry
F160 AF SG D	F044 AF SG B	Drug Abuse Rehabilitation Report System
F160 AFA A	F044 USAFA A	Cadet Hospital/Clinic Records
F160 ARPC A	F044 ARPC A	Physical Examination Reports Suspense File
F160 DODMERB A	F044 USAFA A	Department of Defense Medical Examination Review Board Medical Examination Files
F160 MPC A	F044 AFPC A	Medical Assignment Limitation Record System
F160 SG A	F044 AFSG G	Aircrew Standards Case File
F161 AF SG A	F044 AF SG H	Air Force Aerospace Physiology Training Programs
F161 AF SG B	F044 AF SG M	Compression Chamber Operations
F161 AF SG C	F044 AF SG O	USAF Master Radiation Exposure Registry
F162 AF SG A	F044 AF SG C	Dental Health Records
F162 SG A	F044 AFSG H	Dental Personnel Actions
F168 AF SG A	F044 AF SG D	Automated Medical/Dental Record System
F168 AF SG B	F044 AF SG Q	Family Advocacy Program Record
F168 AF SG C	F044 AF SG E	Medical Record System
F168 AF SG D	F044 AF SG F	Medical Service Accounts
F168 AF SG E	F044 AF SG G	Nursing Service Records
F168 AF SG F	F044 AF SG J	Air Force Blood Program
F168 AF SG G	F044 AF SG R	Reporting of Medical Conditions of Public Health and Military Significance
F175 AFAA A	F065 AFAA A	Air Force Audit Agency Management Information System - Report File
F176 AA A	F065 SAFAA A	Accounts Receivable
F176 AF HC A	F065 AF HC A	Chaplain Fund Service Contract File
F176 AF MP A	F065 AF SVA A	Non-appropriated Fund Instrumentalities (NAFIs) Financial System
F176 AF MP B	F065 AF SVA B	Non-appropriated Fund (NAF) Insurance and Employee Benefit System File
F176 AF MP C	F065 AF SVA C	Morale, Welfare, and Recreation (MWR) Participation/Membership/Training Records

DEPARTMENT OF THE AIR FORCE PRIVACY ACT SYSTEMS OF RECORDS NOTICES—Continued

System Identifier		System Name
From:	To:	
F176 AF MP D	F065 AF SVA D	Non-appropriated Funds Standard Payroll System
F177 AETC A	F065 AETC A	Air Force ROTC Cadet Pay System
F177 AF AFC A	F065 AF AFC B	Accounts Receivable Records Maintained by Accounting and Finance
F177 AF AFC B	F065 AF AFC C	Travel Records
F177 AF AFC C	F065 AF AFC D	Air Reserve Pay and Allowance System (ARPAS)
F177 AF AFC D	F065 AF AFC E	Joint Uniform Military Pay System (JUMPS)
F177 AF AFC E	F065 AF AFC F	Reports of Survey
F177 AF AFC F	F065 AF AFC G	Civilian Pay Records
F177 AF SG A	F065 AF SG A	Control Logs
F177 AFA A	F065 AFA A	Cadet Accounting and Finance System
F177 AFAFC A	F065 AFAFC A	Accounting and Finance Officer Accounts and Substantiating Documents
F177 AFAFC B	F065 AFAFC B	Accrued Military Pay System, Discontinued
F177 AFAFC C	F065 AFAFC C	Uniformed Services Savings Deposit Program (USSDP)
F177 AFAFC D	F065 AFAFC D	Claims Case File - Active Duty Casualty Case Records
F177 AFAFC E	F065 AFAFC E	Claims Case File - Corrected Military Records
F177 AFAFC F	F065 AFAFC F	Claims Case File - Missing in Action Data
F177 AFAFC G	F065 AFAFC G	Indebtedness and Claims
F177 AFAFC I	F065 AFAFC H	Loss of Funds Case Files
F177 AFAFC J	F065 AFAFC I	Military Pay Records
F177 AFAFC K	F065 AFAFC J	Pay and Allotment Records
F177 AFAFC L	F065 AFAFC K	USAF Retired Pay System
F178 AFC4A A	F038 SSG A	Center Automated Manpower and Update System (CAMPUS)
F178 AFMC B	F038 AFMC A	Manhour Accounting System (MAS)
F190 AF PA A	F035 AF SAFPA A	Special Events Planning - Protocol
F190 AF PA B	F035 AF SAFPA B	Hometown News Release Background Data File
F190 SAFPA A	F035 SAFPA A	Biographies of Officers and Key Civilians Assigned to SAF/PA
F190 SAFPA B	F035 AF SAFPA C	Official Biographies
F190 SAFPA C	F035 SAFPA E	Public Affairs References
F200 AFIS A	F031 497IG C	Security File for Foreign Intelligence Collection
F205 AF A	F031 AF SP M	Personnel Security Access Records
F205 AF SP A	F031 AF SP N	Special Security Files
F205 AFISA A	F031 497IG A	Sensitive Compartmented Information Personnel Records
F205 AFMC A	F031 AFMC B	Space Human Assurance and Reliability Program (SHARP)
F205 AFSCO A	F031 497IG B	Special Security Case Files
F205 AFSCO B	F031 11 SPS A	Presidential Support Files
F205 AFSCO C	F031 11 SPS B	Personnel Security Clearance and Investigation Records
F205 AFSP A	F031 SAFPA A	Requests for Access to Classified Information by Historical Researchers
F211 AF MP A	F036 AF DP C	Family Services Volunteer Record
F213 AF MP A	F036 AF DP D	Individual Class Record Form
F213 AFMWRC A	F034 AF SVA D	Air Force Educational Assistance Loans
F215 AF DP A	F034 AF SVA C	Child Development/Youth Activities Records
F215 AFMWRSA A	F034 AF SVA F	Automated Air Force Library Information System
F265 AFA A	F052 USAFA A	Cadet Chaplain Records
F265 HC A	F052 AFHC F	Non-Chaplain Ecclesiastical Endorsement Files
F265 HC B	F052 AFHC G	Chaplain Personnel Roster
F265 HC D	F052 AFHC H	Records on Baptisms, Marriages and Funerals by Air Force Chaplains
F900 ACC A	F036 ACC A	Special Awards File
F900 AF MP A	F036 AF PC V	Awards and Decorations
F900 AF MP B	F036 AF PC W	Suggestions, Inventions, Scientific Achievements
F900 AFA A	F036 USAFA L	Cadet Awards Files
F900 AFA B	F036 USAFA M	Thomas D. White National Defense Award

[FR Doc. 97–15164 Filed 6–10– 97; 8:45 am]

BILLING CODE 5000–01–F

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision for the Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for Proposed Combined-Forces Training Activities, New Equipment Utilization, and Range Modernization Program at Camp Roberts Army National Guard Training Site, California

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The Record of Decision (ROD) was signed on May 1, 1997.

The decision made in the ROD was to implement the proposed action and a series of mitigation measures to minimize the environmental impacts of this action. The proposed action consists of three components: combined-forces training with two brigades of personnel and associated equipment, new equipment utilization, and a range modernization program.

The combined-forces training component would consist of increasing the intensity of training from a typical maximum of approximately 5,300 soldiers to approximately 10,600 soldiers during an annual training period at Camp Roberts. Four new types of equipment would be introduced at Camp Roberts as part of the proposed action: the M1 Abrams series of tanks would replace the M60 series tanks, Bradley Fighting Vehicles would replace the M113 series armored personnel carriers, the Multiple-Launch Rocket System would replace all but two of the M110 8-inch howitzers, and the AH–64 series Apache helicopters would replace the Cobra helicopters. The range modernization program component would be composed of both upgrading existing ranges and constructing new ranges.

Copies: Copies of the ROD will be mailed to individuals who participated in the public scoping process. Copies will also be sent to Federal, state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy by request.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel William Parsonage, EIS/EIR Project Officer. Camp Roberts Army National Guard Training Site, Camp Roberts, CA 93451–5000; telephone (805) 238–8207.

Dated: June 6, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health) OASA (I,L&E).

[FR Doc. 97–15276 Filed 6–10–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Programmatic Environmental Assessment (PEA) for the Joint Vaccine Acquisition Program (JVAP)

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of the Army (Army) announces the availability for public review and comment of a draft PEA for the JVAP. The primary objective of the JVAP is to develop, produce, store, test, and field sufficient quantities of U.S. Food and Drug Administration (FDA) licensed vaccines to implement U.S. government policy for protecting its armed forces against biological warfare agents. Because of the current threat of biological warfare and its continuing proliferation, there is an urgent need to protect our fighting men and women who go in harms way. The JVAP is implemented by the Department of Defense (DOD) through the Joint Program Office for Biological Defense (JPO BD) for which the Army is the lead agency. The JVAP PEA characterizes and assesses the possible and probable environmental consequences associated with the JVAP as proposed and the alternatives considered. The PEA concludes that the proposed JVAP activities and the alternatives analyzed are not likely to have significant adverse effects upon the quality of the environment.

Alternatives: a. Implement and operate the JVAP through which the Army proposes to develop, produce, store, test, and field vaccines for biological defense which are otherwise unavailable (Preferred Alternative).

b. No action (cessation of all JVAP activities now and in the future).

c. Conduct current and currently planned JVAP activities in a consolidated government facility.

d. Conduct current and currently planned JVAP activities at a consolidated contractor facility.

Comments: The JVAP Draft PEA is available for public review and comment. Mr. Bruce G. Kay is the DA clearinghouse for requests for the JVAP draft PEA and documentation from previous environmental analyses referenced in the draft PEA. Written comments for consideration in preparing the final Programmatic Environmental Assessment should be submitted to the address provided below.

DATES: The agency must receive comments on or before July 14, 1997.

ADDRESSES: Mail comments and document copy requests to: Joint Vaccine Acquisition Project Management Office, JVAP–PMO (Attn: Mr. Bruce Kay), 568 Doughten Street, Fort Detrick, Maryland 21702–5040; or phone at (301) 619–2016; or fax at (301) 619–7230; e-mail: bruce__g__kay@ftdetrck-ccmail.army.mil.

Dated: June 6, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I L&E).

[FR Doc. 97–15235 Filed 6–10–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; New Computer Matching Program Between the Department of Veterans Affairs and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a new computer matching program between the Department of Veterans Affairs (VA) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between VA and DoD that their records are being matched by computer. The record subjects are VA delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under programs administered by VA so as to permit VA to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective July 11, 1997, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and VA have concluded an agreement to conduct a computer matching program between the agencies.

The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that VA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between VA and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Debt Management Center, U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on May 22, 1997, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (61 FR 6435, February 20, 1996). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: June 5, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. *Participating Agencies:* Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the Match:* Upon the execution of this agreement, VA will provide and disclose debtor records to DMDC to identify and locate any Federal personnel, employed or retired, who owe delinquent debts to the Federal Government under certain programs administered by VA. VA will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by VA of the employing agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for Conducting the Match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514, as amended, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, as amended, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 138, as amended, Assistant Secretaries of Defense; section 101(1) of Executive Order 12731; 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108, Collection by Offset from Indebted Government Employees (OPM); 38 CFR 1.980 - 1.994 (VA).

D. *Records to be Matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

Sections 5 and 10 of the Debt Collection Act of 1982 (public Law 97-365) authorize agencies to disclose information about debtors in order to effect salary or administrative offsets. Agencies must publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Sections 5 and 10 of the Debt Collection Act will comprise the necessary authority to meet the Privacy Act's 'compatibility' condition. The systems of records described below contain an appropriate routine use disclosure between the agencies of the information proposed in the match. The routine use provisions are compatible with the purpose for which the information was collected.

VA will use personal data from the following Privacy Act record systems for the match: Accounts Receivable-VA, 88VA20A6, published in the **Federal Register** at 61 FR 60148 (Nov. 26, 1996).

DoD will use the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base' last published in the **Federal Register** at 61 FR 32779 on June 25, 1996.

E. *Description of Computer Matching Program:* VA, as the source agency, will provide DMDC with a electronic file which contains the names of delinquent debtors in programs VA administers. Upon receipt of the computer tape file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the VA file against a DMDC computer database. The DMDC database, established under an interagency agreement between DoD, OPM, OMB and the Department of the Treasury, consists of employment records of non-postal Federal employees and military members, active and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to VA. VA is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with VA's source file and for resolving any discrepancies or inconsistencies on an individual basis. VA will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file provided by VA will contain data elements of the debtor's name, SSN, internal account numbers and the total amount owed for each debtor on approximately 300,000 delinquent debtors.

The DMDC computer database file contains approximately 8 million records of active duty and retired military members, including the Reserve and Guard, and the OPM government-wide, non-postal Federal civilian records of current and retired Federal employees and Non-appropriated Fund employees.

DMDC will match the SSNs on the VA tape by computer against the DMDC database. Matching records, hits based on SSN's, will produce data elements of the individual's name, SSN, service or agency, and current work or home address.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated semiannually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between VA and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 97–15163 Filed 6–10–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Director, Information Resources Management Group, 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 July 11, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, 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 Director of the Information Resources Management Group 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.

Dated: June 5, 1997.

Linda C. Tague,

Acting Director, Information Resources Management Group.

Office of Postsecondary Education

Title: The Comprehensive Program of the Fund for the Improvement of Postsecondary Education (New Grants).

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 2,100

Burden Hours: 28,100

Abstract: The Comprehensive application is for competitive awards with a two-stage application process (preliminary and final).

[FR Doc. 97–15183 Filed 6–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–171–005 and RP97–311–001]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1997.

Take notice that, on May 29, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective June 1, 1997:

Substitute Twenty-Second Revised Sheet No. 8
Substitute Fourth Revised Sheet No. 109
Substitute Second Revised Sheet No. 132
Substitute Second Revised Sheet No. 134

ANR states that the purpose of this filing is to comply with the Commission's May 19, 1997 order. That order addressed the incorporation of certain Gas Industry Standard Board business practices into ANR's tariff and accepted, subject to certain modifications, ANR's proposal to allow pool-to-pool transfers in ANR's supply areas.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commissions Rules Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15205 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–65–000]

CEA Philippines Holdings LLC; Notice of Application of CEA Philippines Holding LLC for Commission Determination of Exempt Wholesale Generator Status

June 5, 1997.

On May 23, 1997, CEA Philippines Holdings LLC (CPH), with its principal office at The Corporation Trust Company, Corporate Trust Center, 1209 Orange Street, Wilmington, Delaware filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CPH is a company organized under the laws of Delaware. CPH will be engaged, directly or indirectly through an Affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a 63 MW diesel-fired cogeneration facility comprised of six 8 MW and three 5 MW bunker-fired diesel generating units coupled with six heat recovery steam generators located in Cavite, Philippines and to engage in project development activities with respect thereto. CPH will in addition, through an Affiliate as defined in Section 2(a)(11)(B), hold the voting securities of a special purpose subsidiary which will used solely to own the land necessary for a future EWG which it will own or operate and which is currently under development.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before June 17, 1997 and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15189 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–549–000]

CNG Transmission Corporation; Notice of Application

June 5, 1997.

Take notice that on May 27, 1997, CNG Transmission Corporation (CNGT), 445 Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP97–549–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and reclassify to gathering, 3 compressor stations and 65 transmission lines behind compressor stations, in various counties in West Virginia and Pennsylvania, all as more fully set forth in the application on file with the Commission and open to public inspection.

CNGT states that on October 30, 1996, CNGT filed a letter with the Commission indicating that some classification anomalies existed in CNGT's production area which presented difficulties in administering various rules and regulations of the Commission regarding transmission and gathering. CNGT notes that in several instances gathering lines were downstream of lines classified as transmission. CNGT asserts that upon examination of these lines it believes that the transmission classification is inappropriate under the Commissions ''primary functions'' test for gathering. CNGT indicates that after a lengthy review of the gathering systems in the production areas of West Virginia and Pennsylvania, CNGT proposes to abandon and reclassify as gathering all transmission lines found behind compressor stations which feed production into the station.

CNGT states that there are about 65 lines that currently meet this criteria and the lines range from 1 inch to 24 inches in diameter. CNGT further states that there are eight lines over 15 miles in length and the longest is 36 miles in length. CNGT claims that there are three compressor stations that also should be reclassified from transmission to gathering since they act to feed gathering gas to transmission compressor stations.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 26, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 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 proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission 's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15185 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–5–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

June 5, 1997.

Take notice that, on May 30, 1997, Colorado Interstate Gas Company (CIG) filed Fourth Revised Sheet No. 11A of its FERC Gas Tariff, First Revised Volume No. 1, reflecting an increase in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel

Gas from 0.68% to 0.76% effective July 1, 1997.

CIG states that the increase reflected by the instant filing is primarily traceable to conditions prevailing during the first quarter of Calender Year 1997. That period was marked by a dramatic increase in prices for natural gas on the spot market. By contrast, prices for natural gas liquids remained relatively constant during this period.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in the determining 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15214 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–158–007]

Columbia Gas Transmission Corporation; Notice of Filing Account No. 191 Final Close-Out Report

June 5, 1997.

On May 30, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing in Docket No. RP94–158, Columbia filed to reflect each customer's Account No. 191 monthly direct bill amounts based on the customer elected amortization periods and the then current FERC interest rate. Columbia stated in that filing that it would true-up a customer's direct bill amount (billed and collected) based on the actual FERC interest rates in effect for the applicable amortization period. The true-up for each customer occurred in the last applicable billing month of the customer's amortization period. Appendix A sets forth the amounts actually billed and collected, including the appropriate interest, from Columbia's customers for the applicable amortization periods.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15195 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–019]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1997.

Take notice that on May 30, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff:

To Be Effective February 1, 1997
  Fourth Revised Sheet No. 483
  Third Revised Sheet No. 484
To Be Effective June 1, 1997
  Third Revised Sheet No. 405
  Second Revised Sheet No. 406

Columbia is making the instant submission to effectuate revisions to its tariff approved by the Commission by order issued April 17, 1997, as part of a comprehensive settlement agreement in Docket Nos. RP95–408, et al. (Settlement). Sheet Nos. 405 and 406 reflect revisions to Section 25 of the General Terms and Conditions of Columbia's tariff, and bear an effective date of June 1, 1997, to coincide with Columbia's implementation of the Settlement. Sheet Nos. 483 and 484 reflect revisions to Section 46 of the General Terms and Conditions of Columbia's tariff, and bear an effective date of February 1, 1997, pursuant to Article III, Section I(6) of Stipulation II of the Settlement.

Columbia states that copies of the filing have been served upon its customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filling are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15196 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1343–001]

El Paso Electric Company; Notice of Filing

June 5, 1997.

Take notice that on May 14, 1997, El Paso Electric Company tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 18, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15191 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–20–001, 002, and RP97–194–000 (not consolidated)]

El Paso Natural Gas Company; Notice of Technical Conference

June 5, 1997.

In the Commission's order issued on February 13, 1997, in the above-captioned proceedings concerning implementation by El Paso Natural Gas Company (El Paso) of the Gas Industry Standards Board (GISB) standards, the Commission held that the filings raised issues for which a technical conference is to be convened. On March 13, 1997, the Commission granted El Paso's request to delay its implementation of the GISB standards from April 1, 1997, to June 1, 1997.

The conference to address the issues has been scheduled for Wednesday July 9, 1997, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15197 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–157–004]

Gas Transport, Inc.; Notice of Compliance Filing

June 5, 1997.

Take notice that on May 30, 1997, Gas Transport, Inc. (GTI) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain tariff sheets listed on Appendix A to the filing, with a proposed effective date of June 1, 1997.

GTI states that these tariff sheets reflect the requirements of the Letter Order issued by the Federal Energy Regulatory Commission (''Commission'') on May 15, 1997, in Docket Nos. RP97–157–000, *et al.*

Gas Transport states that copies of this compliance filing were served upon its jurisdictional customers and the Regulatory Commissions of the states of Ohio and West Virginia.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15202 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–2–4–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1997.

Take notice that on May 30, 1997, Granite State Gas Transmission, Inc. (Granite State) tendered for filing in its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on July 1, 1997:

Third Substitute Eighth Revised Sheet No. 21
Third Substitute Ninth Revised Sheet No. 22

According to Granite State, the listed tariff sheets state the surcharge for electric power costs applicable to its firm transportation services for the third quarter of 1997. Granite State further states that the surcharge is derived pursuant to the tracking procedure established in the Power Cost Adjustment provision in its tariff, which was accepted in a Letter Order issued April 25, 1997 in Docket Nos. RP97–300–000, *et al.*

Granite State states that copies of its filing have been served on its firm transportation customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15208 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–141–004]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

June 5, 1997.

Take notice that on May 30, 1997, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Second Revised Sheet No. 42 and Substitute Original Sheet No. 42A, to be effective June 1, 1997.

Great Lakes states the above-named tariff sheets are being filed at the direction of the Commission in its May 19, 1997 Order on Great Lakes' filing to implement the GISB Standards adopted in Order No. 587. The Commission directed Great Lakes to remove the term ''business' from its short-term release provisions to clarify that short-term releases will be available seven days a week.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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 Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15200 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–161–005 and RP97–329–002]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1997.

Take notice that on May 29, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the filing, to become effective June 1, 1997.

Iroquois states that these sheets were submitted in compliance with the provisions of the Commission's May 19, 1997 Order Accepting and Rejecting Tariff Sheets, Subject to Conditions, and Denying Rehearing, 70 FERC ¶ 61,196 (May 19, 1997). In its Order, the Commission accepted tariff sheets that Iroquois had filed on April 2, 1997, subject to Iroquois filing revised sheets to reflect certain changes. The tariff sheets included herewith reflect the changes required by the Order.

Iroquois also states that copies of this filing were served upon all customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15204 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–178–004]

Kern River Gas Transmission Co.; Notice of Compliance Filing

June 5, 1997.

Take notice that on May 30, 1997, Kern River Gas Transmission (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the filing, in conformity with Part 154 of the Regulations of the Federal Energy Regulatory Commission to be effective on June 1, 1997.

Kern River states that the purpose of this filing is to comply with the Commission's Order on Compliance Filing issued on May 20, 1997 in Docket No. RP97–178–002. These revisions will conform Kern River's tariff to the standardized business practices issued by the Gas Industry Standards Board (GISB) and approved by the Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cahsell,

Secretary.

[FR Doc. 97–15206 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–2–53–000]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

June 5, 1997.

Take notice that on May 30, 1997 K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, to be effective July 1, 1997:

Third Revised Volume No. 1–A
First Revised Sheet No. 4–E
First Revised Sheet No. 4–F
First Revised Volume No. 1–C
Eighth Revised Sheet No. 4

KNI states that this filing adjusts KNI's fuel and loss reimbursement percentages through the reconciliation of KNI's actual fuel and loss volumes with the quantity retained in kind for calendar year 1996. KNI proposes an effective date of July 1, 1997 for the revised fuel and loss percentages.

KNI states that copies of the filing were served upon KNI's mainline and Buffalo Wallow customers, interested public bodies, and all parties to the proceedings.

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 Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15210 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–154–004]

Koch Gateway Pipeline Company; Notice of Compliance Filing

June 5, 1997.

Take notice that on May 30, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on the filing, to become effective June 1, 1997.

Koch states that this filing is in compliance with the Commission's May 15, 1997 Order on Rehearing and Compliance Filing, 79 FERC ¶ 61,168. The filing contains revised tariff sheets to comply with the GISB standards, as specifically directed by the May 15, 1997 Order, including the addition of a Trading Partner Agreement in Koch's tariff.

Koch also states that it has served copies of this filing upon each person on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 or the Commission's Rules and Regulations. All such protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15201 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–11–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

June 5, 1997.

Take notice that on May 30, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty-Third Revised Sheet No. 5A, with a proposed effective date of June 1, 1997.

National states that pursuant to Article II, Section 2, of the approved settlement at Docket Nos. RP94–367–000, *et al.*, National is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 10 cents per dth.

National further states that, as required by Article II, Section 4, National is filing a revised tariff sheet within 30 days of the effective date for the revised IG rate.

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 Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15215 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–12–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

June 5, 1997.

Take notice that on May 30, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty-Second Revised Sheet No. 5, with a proposed effective date of July 1, 1997.

National states that this filing reflects the quarterly adjustment to the reservation component of the EFT rate pursuant to the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15216 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–553–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

June 5, 1997.

Take notice that on May 30, 1997, NorAm Gas Transmission Company (NGT), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP97–553–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new 1-inch delivery tap and first cut regulator, located in Crittenden County, Arkansas, under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to construct and operate a new 1-inch delivery tap and first cut regulator on NGT's Line JM–23 located in Section 26, Township 7 North, Range 8 East, West Memphis, Crittenden County, Arkansas to provide service to ARKLA, a distribution division of NorAm Energy Corporation.

NGT states the estimated volumes to be delivered to this tap are approximately 360 MMBtu annually and 1 MMBtu on a peak day. NGT declares it will transport gas to ARKLA and provide service under its tariff, that the volumes delivered are within ARKLA's certificated entitlement, and NGT's tariff does not prohibit the addition of new delivery points. NGT asserts it has sufficient capacity to accomplish the deliveries without detriment or disadvantage or disadvantage to its other customers.

NGT states the estimated total project costs will be approximately $2,394, and ARKLA will reimburse NGT $1,750 of the costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the

time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15186 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–554–000]

NorAm Gas Transmission Company; Notice of Request under Blanket Authorization

June 5, 1997.

Take notice that on May 30, 1997, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP97–554–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to replace and upgrade certain facilities in Arkansas, under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to upgrade a 1-inch meter by replacing it with a 2-inch U-shape meter station at an existing tap on NGT's Line TM–10 in Arkansas County, Arkansas. NGT installed this meter in 1995 to deliver gas to domestic and commercial customers served by Arkla. The existing meter station was certificated in Docket No. CP95–704 to deliver 1,105 MMBtu annually and 10 MMBtu on a peak day. NGT proposes to upgrade this rural extension by removing the existing 1-inch meter and replacing it with a 2-inch U-shape meter. The 2-inch meter would allow estimated deliveries of 4,500 MMBtu annually and 1,800 MMBtu on peak day. The estimated cost of the new meter is $16,073.

NGT states that the total volumes delivered will not exceed total volumes authorized prior to this request and that NGT has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 358.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15187 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–179–005]

Ozark Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1997.

Take notice that on May 30, 1997, Ozark Gas Transmission System (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective June 1, 1997:

Substitute Second Revised Sheet No. 43B
Substitute Original Sheet No. 13B
Fifth Revised Sheet No. 20

Ozark states that the purpose of this filing is to correct two minor typographical errors, and to incorporate the Commission's May 21, 1997 Order allowing Ozark to specify that open seasons for released capacity will end ''at'' 2 p.m. rather than ''no later than'' 2 p.m.

Ozark states that copies of this filing are being served on all participants in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15207 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2470–000]

Pacific Gas and Electric Company; Notice of Filing

June 5, 1997.

Take notice that on May 1, 1997, Pacific Gas and Electric Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15192 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–134–005]

Pacific Gas Transmission Company; Notice of Compliance Filing

June 5, 1997.

Take notice that on May 30, 1997, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Substitute Original Sheet No. 81A.01, Second Substitute Original Sheet No. 81A.05, Substitute First Revised Sheet No. 110, and Original

Sheet Nos. 186 through 200C, to be effective June 1, 1997.

PGT asserts the purpose of this filing is to comply with the Commission's Order on Rehearing issued May 15, 1997 in Docket Nos. RP97–134–000, *et al.* on PGT's compliance filing establishing standards for business practices of interstate natural gas pipelines. PGT states the filing conforms its FERC Gas Tariff, First Revised Volume No. 1–A to the requirements of Order No. 587 in compliance with the May 15, 1997 Order.

PGT further states a copy of this filing has been served upon its jurisdictional customers and interested state regulatory agencies, as well as the official service list compiled by the Secretary in the above-referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15198 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–3–86–000]

Pacific Gas Transmission Company; Notice of Compliance Filing

June 5, 1997.

Take notice that on May 29, 1997, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Seventeenth Revised Sheet No. 5; and as part of its FERC Gas Tariff, Second Revised Volume No. 1: Thirteenth Revised Sheet No. 7. PGT requested the above-referenced tariff sheets become effective July 1, 1997.

PGT asserts that the purpose of this filing is to comply with Paragraphs 37 and 23 of the terms and conditions of First Revised Volume No. 1–A and Second Revised Volume No. 1, respectively, of its FERC Gas Tariff, Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages. These tariff changes reflect a decrease in PGT's fuel and line loss surcharge percentage to become effective July 1, 1997. Also included, as required by Paragraphs 37 and 23, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PGT further states that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or 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 Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15212 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPATMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–2–8–000]

South Georgia Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1997.

Take notice that on May 30, 1997, South Georgia Natural Gas Company (South Georgia) tendered for filing its FERC Gas Tariff Second Revised Volume No. 1, the following revised tariff sheets to be effective July 1, 1997:

Ninth Revised Sheet No. 5
Eighth Revised Sheet No. 6

South Georgia states that the instant filing is submitted pursuant to Section 19.2 of the General Terms and Conditions of its Tariff to adjust its fuel retention percentage (FRP) for all transportation services on its system effective July 1, 1997. The derivation of the revised FRP is based on South Georgia's gas required for operations (GRO) for the twelve-month period ending April 30, 1997, adjusted for the balance accumulated in the Deferred GRO Account at the end of said period, divided by the Transportation volumes received during the same twelve-month period. Based on this calculation, the revised FRP is 1.70% which is a reduction from the currently effective FRP of 2.25%.

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 Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15209 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–137–005]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1997.

Take notice that on May 30, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised Tariff sheets in compliance with the Commission's May 16, 1997 Order in this docket, to become effective June 1, 1997:

First Substitute Second Revised Sheet No. 129
First Substitute Original Sheet No. 212h
First Substitute Second Revised Sheet No. 276

On July 17, 1996, the Commission issued Order No. 587 in Docket No. RM96–1–000 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain

standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in said Order. 18 CFR 284.10(b).

On April 7, 1997, Southern made its Tariff filing to comply with Order No. 587 effective June 1, 1997. On May 16, 1997, the Commission issued an order in this docket accepting Southern's filing except for minor modifications. The filing submitted herein complies with the Commission's May 16, Order in this docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Pro6tests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15199 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–2922–000]

Tampa Electric Company; Notice of Filing

June 5, 1997.

Take notice that on May 9, 1997, Tampa Electric Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211. and 18 CFR 385.214). All such motions or protests should be filed on or before June 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to interevene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15190 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–4–18–000]

Texas Gas Transmission, Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1997.

Take notice that on May 30, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective July 1, 1997:

First Revised Twenty-first Revised Sheet No. 10
First Revised Fourth Revised Sheet No. 10A
First Revised Eighteenth Revised Sheet No. 11
First Revised Fifth Revised Sheet No. 11B

Texas Gas states that the filing reflects the expiration of the Miscellaneous Revenue Credit Adjustment (MCRA) (Docket No. TM96–5–18–000) originally filed by Texas Gas on May 31, 1996, and approved by the Commission in its letter order dated June 17, 1996. This filing also reflects the MCRA, as required by Article IV of Texas Gas's Docket No. RP94–423 settlement agreement approved by the Commission's letter order issued February 20, 1996, and the respective Section 29 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1. The effect of these two MCRA results in no net change to the FT, NNS and SGT rates. Lastly, this filing reflects the ISS Revenue Credit Adjustment as required by Section 5.3 of Rate Schedule ISS of Texas GAS's FERC Gas Tariff, First Revised Volume No. 1 which results in a $.0001 decrease to the FT Daily Demand and Overrun Rates.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15213 Filed 6–10 –97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–159–005]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

June 5, 1997.

Take notice on May 30, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are listed on Appendices A and B to the filing. The proposed effective date for the tariff sheets is June 1, 1997.

Transco states that the purpose of the instant filing is to comply with the Commission's order dated May 15, 1997 in Docket Nos. RP97–159–001 and RP97–159–002 (the May 15 Order). The May 15 Order addressed Transco's April 2, 1997 submission of tariff sheets reflecting implementation of standards proposed by the Gas Industry Standards Board (GISB) and adopted by the Commission in Order No. 587. The revised tariff sheets reflect the changes to Transco's tariff required by the May 15 order.

Transco states that it is serving copies of the instant filing to customers, State Commission and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15203 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ97–3–35–000]

West Texas Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1997.

Take notice that on May 30, 1997, West Texas Gas, Inc. (WTG), tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, WTG submitted Twenty-Third Revised Sheet No. 4 to be effective July 1, 1997. This tariff sheet and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the purchased gas adjustment provisions of Section 19 of the General Germs and Conditions of WTG's FERC Gas Tariff, First Revised Volume No. 1.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15217 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–556–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

June 5, 1997.

Take notice that on May 30, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 42301, filed in Docket No. CP97–536–000 a request pursuant to Sections 157.205, 157.212, and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for approval to abandon in place approximately 5,280 feet of 3-inch lateral pipeline and install a tap and construct approximately 2,600 feet of replacement four-inch lateral pipeline and a new high pressure regulator setting to serve Missouri Gas Energy in Johnson County, Missouri, under Texas Gas' blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act (NCA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that the projected volume of delivery will remain unchanged. WNG further states that the construction cost is estimated to be $106,946 with a reclaim cost estimated to be $1,500. WNG asserts that this change is not prohibited by its existing tariff and that WNG has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15188 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–547–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

June 5, 1997.

Take notice that on May 27, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP97–547–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a farm tap at Station 154+90 on the Cleveland-Grafton pipeline in Stutsman County, North Dakota, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 *et al.* pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to remove the tap and riser and the below-ground valve will be accessed by backhoe excavation of an area almost 10 feet in diameter. The valve will be shut in and the excavated area on existing right-of-way will be backfilled and leveled. The owner will cultivate the area and seeding is unnecessary. The farm tap is located in NE¼, Section 18, TWP140N, RGE67W, Stutsman County, North Dakota. Williston Basin states that Montana-Dakota, a local distribution company, has requested that this tap be abandoned since the only end-use customer no longer requests service there. The tap's abandonment will not affect Williston Basin's peak day or annual transportation to Montana-Dakota and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the

Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15184 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPATMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–3–49–000]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

June 5, 1997.

Take notice that on May 30, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing its Annual Take-or-Pay Reconciliation Filing pursuant to Section 37 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. More specifically, Williston Basin filed the following tariff sheets, to be effective July 1, 1997:

Second Revised Volume No. 1
Twenty-fifth Revised Sheet No. 15
Twenty-eighth Revised Sheet No. 16
Twenty-fourth Revised Sheet No. 18
Twenty-first Revised Sheet No. 21
Fourth Revised Sheet No. 321
Original Volume No. 2
Sixty-ninth Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets are being filed to reflect recalculated fixed monthly surcharges and revised throughput surcharges to be effective during the period July 1, 1997 through June 30, 1998 pursuant to the procedures contained in Section 37 of the General Terms and Conditions of its Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15211 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2968–000]

Wisconsin Public Service Corporation; Notice of Filing

June 5, 1997.

Take notice that on May 15, 1997, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Non-Firm Open-Access Transmission Service Agreement between WPSC and the Oconto Electric Cooperative under WPSC's Open Access Transmission Tariff. WPSC states that also included in this filing is an executed service agreement between WPSC and the Cooperative under WPSC's W–2A Partial Requirements Wholesale Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 June 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15193 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–56–000, et al.]

American Ref-Fuel Company of Delaware County, L.P., et al.; Electric Rate and Corporate Regulation Filings

June 4, 1997.

Take notice that the following filings have been made with the Commission:

1. American Ref-Fuel Company of Delaware County, L.P.

[Docket No. EG97–56–000]

On May 30, 1997, American Ref-Fuel Company of Delaware County, L.P. (ARC), a Delaware limited partnership, with its principal place of business at c/o American Ref-Fuel Company, 770 North Eldridge, Houston, TX 77079, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

ARC is engaged directly and exclusively in the business of operating a municipal solid waste-fired small power production facility with a maximum net power production capacity of 79.5 MW which is an eligible facility. All of the facility's electric power net of the facility's operating electric power is and will be purchased at wholesale by Atlantic City Electric Company and PECO Energy Company.

Comment date: June 30, 1997, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Sky River Partnership

[Docket No. EG97–66–000]

On May 23, 1997, Sky River Partnership, 13000 Jameson Road, Tehachapi, California 93561 (Sky River), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Sky River owns a wind-powered eligible facility with a capacity of approximately 77 megawatts (along with certain appurtenant interconnected transmission facilities), located in Tehachapi, California.

Comment date: June 24, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration

of comments to those that concern the adequacy or accuracy of the application.

3. Zond Windsystems Holding Company

[Docket No. EG97–67–000]

On May 23, 1997, Zond Windsystems Holding Company, 13000 Jameson Road, Tehachapi, California 93561 (ZWHC), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

ZWHC owns a wind-powered eligible facility with a capacity of approximately 20 megawatts (along with certain appurtenant interconnected transmission facilities), located in Tehachapi, California.

Comment date: June 24, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Victory Garden Phase IV Partnership

[Docket No. EG97–68–000]

On May 23, 1997, Victory Garden Phase IV Partnership, 13000 Jameson Road, Tehachapi, California 93561 (Victory Garden IV), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Victory Garden IV owns a wind-powered eligible facility with a capacity of approximately 22.05 megawatts (along with certain appurtenant interconnected transmission facilities), located in Tehachapi, California.

Comment date: June 24, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Sachsen Holding B.V.

[Docket No. EG97–69–000]

On May 28, 1997, Sachsen Holding B.V. (Applicant) applied for a determination that it will be an ''exempt wholesale generator'' within the meaning of Section 32(a)(1) of PUHCA. Applicant will own 45 percent of the equity capital of PT Dayalistrik Pratama (PTDP). PTDP is a special purpose company incorporated under the laws of Indonesia to develop, construct and own a power plant to be built in West Java, Indonesia (the ''Facility''). Indirectly through PTDP, Applicant will be an owner of the Facility. The Facility will be a single unit, coal-fired steam generating boiler and a single unit steam turbine generator with a 100 percent nominal load of 420 megawatts and a net output capacity of 400 megawatts. All of the output of the Facility will be sold to PT Perusahaan Listrik Negara (Persero) (PLN), the state-owned electric utility of Indonesia, pursuant to a 30-year Power Purchase Agreement.

Comment date: June 24, 1997, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Pennsylvania Power Company

[Docket No. ER96–749–001]

Take notice that on April 24, 1997, Pennsylvania Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Sunoco Power Marketing L.L.C.

[Docket No. ER97–870–000]

Take notice that on May 22, 1997, Sunoco Power Marketing L.L.C. (Sunoco), tendered for filing an amended application in the above-captioned docket seeking the additional authority to buy power from, and sell power to, all willing buyers and sellers—including, but not limited to, Sunoco's affiliates—at market based rates under Sunoco's FERC Electric Rate Schedule No. 1. Sunoco requested that it be granted this additional authority without prejudice to the blanket authorizations and waivers previously granted in this docket by order of the Director of the Division of Applications of the Commission's Electric Power Regulation Office on April 11, 1997. Sunoco also submitted a revised FERC Electric Rate Schedule No. 1 which it requested become effective within sixty (60) days from the date of its filing.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Nevada Power Company

[Docket No. ER97–1655–000]

Take notice that on May 21, 1997, Nevada Power Company (Nevada Power) tendered for filing an Amendment to its Electric Service Coordination Tariff (Amended Coordination Tariff) having a proposed effective date of March 1, 1997. The amendment is being made to comply with FERC's Order No. 888 unbundling requirements.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Valero Power Services Company

[Docket No. ER97–1847–000]

Take notice that on May 14, 1997, Valero Power Services Company (Valero Power) filed an amendment to the notification of a change in its status which was previously filed on February 26, 1997. The Amendment adopts the Standards of Conduct applicable to the relationship between Valero Power and Pacific Gas and Electric Company, a wholly-owned subsidiary of PG&E Corporation, pending and after approval of the proposed merger between PG&E Corporation and Valero Energy Corporation. The Standards of Conduct submitted are the same as Pacific Gas and Electric Company has adopted to govern its conduct with other power marketing affiliates and which the Commission has previously approved.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Energis Resources Incorporated

[Docket No. ER97–2176–001]

Take notice that on May 30, 1997, Energis Resources Incorporated tendered for filing copies of its compliance filing in the above referenced docket in response to Ordering Paragraph (A) of the Commission's Order Conditionally Accepting For Filing Proposed Market-Based Rates, Energis Resources Incorporated, 79 FERC ¶ 61,170 (1997).

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Hartford Power Sales, L.L.C.

[Docket No. ER97–2227–000]

Take notice that on May 22, 1997, Hartford Power Sales, L.L.C. filed a notice of withdrawal of its filing in this docket.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER97–2309–001]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on May 27, 1997, tendered for filing its refund report in the above referenced proceeding. The submittal was made in compliance with the letter order issued by the Director, Division of Applications on May 13, 1997.

Copies of the filing have been served on Madison Gas and Electric Company, Sonat Power Marketing, L.P., and the Public Service Commission of Wisconsin.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Houston Lighting & Power Company

[Docket No. ER97–2524–000]

Take notice that on May 23, 1997, Houston Lighting & Power Company (HL&P) tendered for filing an amendment to its filing in the referenced docket.

HL&P states that copies of the amendment have been served on the parties to Docket No. ER97–2524 and on the Public Utility Commission of Texas.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Keystone Energy Services

[Docket No. ER97–3053–000]

Take notice that on May 23, 1997, Keystone Energy Services, Inc. (Keystone) petitioned the Commission for acceptance of Keystone Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Keystone intends to engage in wholesale electric power and energy purchases and sales as a marketer. Neither Keystone nor any affiliate of Keystone is in the business of generating or transmitting electric power.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Otter Tail Power Company

[Docket No. OA96–192–002]

Take notice that on May 12, 1997, Otter Tail Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15248 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–36–000, et al]

Northeast Empire Limited Partnership #2, et al.; Electric Rate and Corporate Regulation Filings

June 3, 1997.

Take notice that the following filings have been made with the Commission:

1. Northeast Empire Limited Partnership #2

[Docket No. EC97–36–000]

On May 27, 1997, Northeast Empire Limited Partnership #2, c/o Thomas D. Emero, Twenty South Street, P.O. Box 407, Bangor, Maine 04402–0407, filed with the Federal Energy Regulatory Commission an Application for Approval of Disposition of Jurisdictional Facilities pursuant to Part 33 of the Commission's Rules.

Comment date: June 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Independent Power Producers of New York, Inc.

[Docket No. EL97–40–000]

Take notice that on May 23, 1997, Independent Power Producers of New York, Inc. (IPPNY) filed a petition for a declaratory order finding that New York public utilities have no authority to direct qualifying facilities under the Public Utilities Regulatory Policies Act of 1978 (PURPA) to comply with certain orders of the New York Public Service Commission (PSC) respecting a QF monitoring program; seeking enforcement action under PURPA § 210(h) and requesting expedited consideration.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. MidAmerican Energy Company

[Docket No. ER97–2984–000]

Take notice that on May 15, 1997, MidAmerican Energy Company (MidAmerican) filed with the Commission a Network Integration Transmission Service Agreement and a Network Operating Agreement, both dated April 7, 1997 and entered into by MidAmerican and the City of Sergeant Bluff, Iowa (Sergeant Bluff) in accordance with MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of July 1, 1997 for the Agreements and, accordingly, seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Sergeant Bluff, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER97–2985–000]

Take notice that on May 15, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing executed Transmission Service Agreements between WPSC and Wisconsin Power & Light Company. The Agreements provide for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Orange and Rockland Utilities, Inc.

[Docket No. ER97–2986–000]

Take notice that on May 15, 1997, Orange and Rockland Utilities, Inc. (Orange and Rockland), filed Service Agreements between Orange and Rockland and Cleveland Electric Illuminating Co., CMS Marketing Services and Trading Co., The Power Company of America L.P., and Toledo Edison Company. These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of May 15, 1997 for the Service Agreements. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Electric Company & Cambridge Electric Light Company

[Docket No. ER97–2987–000]

Take notice that on May 15, 1997, Commonwealth Electric Company

(Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers):

Bangor Hydro-Electric Company
CNG Power Services Corporation
Duke/Louis Dreyfus L.L.C.
Rainbow Energy Marketing Corporation
Town of South Hadley, Electric Light Department

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies and the Customers have also filed Notices of Cancellation for service under the Companies' Power Sales and Exchange Tariffs (FERC Electric Tariff Original Volume Nos. 5 and 3) and the Customers' respective FERC Rate Schedules.

The Companies request an effective date as specified on each Service Agreement and Notice of Cancellation.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ER97–2988–000]

Take notice that on May 16, 1997, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Non-Firm Point-to-Point Transmission Service Agreement with Powerex under FERC Electric Tariff, Original Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Powerex.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER97–2989–000]

Take notice that on May 16, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Regulations, (18 CFR 35.13), a Supplement to its September 28, 1993 Marcy-South 345 kV Transmission Facilities-Transmission Reinforcement Agreement (Agreement) with the New York Power Authority (NYPA), designated NYSEG Rate Schedule FERC No. 112. The proposed changes would decrease revenues for the twelve month period ending June 30, 1998.

This rate filing is made pursuant to Article No. 2 of the Agreement. The annual charges associated with other taxes, operating expenses, maintenance expenses, working capital, and associated revenue taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1996.

NYSEG requests an effective date of July 1, 1997, and, therefore, requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the New York Power Authority and on the Public Service Commission of the State of New York.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc.

[Docket No. ER97–2990–000]

Take notice that on May 16, 1997, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and Vastar Power Marketing, Inc. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective April 22, 1997.

Copies of the filing were served upon Vastar Power Marketing, Inc. and the Kansas Corporation Commission.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Electric and Gas Company

[Docket No. ER97–2991–000]

Take notice that on May 16, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Plum Street Energy Marketing, Inc. (Plum Street) pursuant to the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 1, 1997.

Copies of the filing have been served upon Plum Street and the New Jersey Board of Public Utilities.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric and Gas Company

[Docket No. ER97–2992–000]

Take notice that on May 16, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to USGen Power Services, L.P. (USGen) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 1, 1997.

Copies of the filing have been served upon USGen and the New Jersey Board of Public Utilities.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER97–2993–000]

Take notice that on May 16, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted to the Commission for filing a change to MidAmerican's Rate Schedule FERC No. 19, as supplemented. The change consists of the Second Amendment dated May 7, 1997, entered into by MidAmerican and Central Iowa Power Cooperative (CIPCO) to Interconnection Agreement dated June 13, 1983, entered into by Iowa-Illinois Gas and Electric Company (a predecessor by merger to MidAmerican) and CIPCO.

MidAmerican states that the purpose of the rate schedule change is to make a technical correction to the description of an interconnection, add references to several normally closed points of

interconnection and modify transmission service arrangements to CIPCO at a substation.

MidAmerican requests an effective date in accordance with Section IV of the Second Amendment and further requests the Commission to accept the rate schedule change for filing within 60 days of the date of its submission to the Commission. MidAmerican has served a copy of the filing on representatives of CIPCO, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER97–2994–000]

Take notice that on May 16, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and City of Hamilton, Ohio under Rate GSS.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Company

[Docket No. ER97–2995–000]

Take notice that on May 16, 1997, Commonwealth Edison Company (ComEd) submitted for filing a short-term firm umbrella Service Agreement for firm transactions with Illinois Power Company (IP), under the terms of ComEd's OATT, Docket No. OA97–569–000 filed on March 26, 1997, and three non-firm Service Agreements with Ohio Edison Company (Ohio), Madison Gas and Electric Company (MG&E), and Delmarva Power & Light Company (DP&L), under the terms of ComEd's OATT, under Docket No. OA96–166–000.

ComEd also submitted an executed service agreement with Delhi Energy Services, Inc. (Delhi). On April 18, 1997, ComEd filed an unexecuted agreement with Delhi, to be effective March 20, 1997. ComEd now asks that the Commission substitute the executed agreement for the previously filed unexecuted agreement, to be effective March 20, 1997, the original effective date.

ComEd requests various effective dates, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon IP, Ohio, MG&E, DP&L, Delhi, and the Illinois Commerce Commission.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Central Illinois Public Service Company

[Docket No. ER97–2996–000]

Take notice that on May 16, 1997, Central Illinois Public Service Company (CIPS), submitted a service agreement, dated May 7, 1997, establishing DuPont Power Marketing, Inc. as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of May 7, 1997 for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon DuPont Power Marketing, Inc. and the Illinois Commerce Commission.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Co.

[Docket No. ER97–2997–000]

Take notice that on May 16, 1997, Southern California Edison Company (Edison), tendered for filing Service Agreements (Service Agreements) with the City of Vernon, Enron Power Marketing, Inc., Pacific Gas & Electric, and Valero Power Services Company for Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888, and a Notice of Cancellation of Service Agreement Nos. 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, and 115 under FERC Electric Tariff, Original Volume No. 4.

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission regulations. Edison also submitted a revised Sheet No. 152 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of May 17, 1997 for Attachment E, and to allow the Service Agreements to become effective and terminate according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Northeast Utilities Service Company

[Docket No. ER97–2998–000]

Take notice that on May 16, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the Village of Rockville Centre under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Village of Rockville Centre.

NUSCO requests that the Service Agreement become effective May 5, 1997.

Comment date: June 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15247 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 503, 1971, 1975–014, 2055, 2061–004, 2726, 2777–007, 2778–005—Idaho]

Idaho Power Company; Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Conduct Public Scoping Meetings and a Site Visit

June 5, 1997.

The Federal Energy Regulatory Commission (Commission) is reviewing applications to relicense and continue operating the following Idaho Power Company hydroelectric projects:

Bliss Project—Project No. 1975
Lower Salmon Falls Project—Project No. 2061
Upper Salmon Falls Project—Project No. 2777
Shoshone Falls Project—Project No. 2778

The projects are located on the Snake River in Twin Falls, Elmore, Gooding, and Jerome Counties, Idaho.

Relicensing these projects could constitute a major federal action

significantly affecting the quality of the human environment. Therefore, the Commission intends to prepare an Environmental Impact Statement (EIS) on the projects in accordance with the National Environmental Policy Act of 1969, and the Commission's regulations. The EIS will objectively consider both site-specific and cumulative environmental impacts of the projects and reasonable alternatives, and will include an economic and engineering analysis.

A draft EIS will be circulated for review and comment by all interested parties, and the Commission will hold a public meeting on the draft EIS. FERC staff will consider and respond to comments received on the draft EIS in the final EIS. the FERC staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

The Commission staff is also preparing a cumulative analysis of the four projects already filed along with the following four other Idaho Power Company projects, scheduled to be filed between 1998 and 2008:

C.J. Strike Project—Project No. 2055
Upper and Lower Malad Project—Project No. 2726
Hells Canyon Project—Project No. 1971
Swan Falls Project—Project No. 503

Scoping

Concerned citizens, special interest groups, local governments, state and federal agencies, tribes, and any other interested parties are invited to comment on the scope of the environmental issues that should be analyzed in the EIS and the cumulative analysis. Scoping will help ensure that all significant issues related to this proposal are addressed in the EIS.

Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects

A scoping meeting oriented toward the public will be held starting at 7:00 p.m. on Tuesday, July 15, 1997, at the College of Southern Idaho, located at 315 Falls Avenue West, Twin Falls, Idaho.

A scoping meeting oriented toward the agencies will be held at 9:00 am on Thursday, July 15, 1997, at the Boise Center on the Grove, 850 West Front Street, Boise, Idaho.

The public and the agencies may attend either or both meetings.

Cumulative Analysis of the Snake River Basin

A scoping meeting for the cumulative analysis will be held starting at 9:00 a.m. on Friday, July 18, 1997, at the Boise Center on the Grove, 850 West Front Street, Boise, Idaho.

Objectives

At the July 15 and 17 scoping meetings, FERC staff will (1) identify preliminary environmental issues related to the proposed projects; (2) attempt to identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EIS; (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 EIS, including points of view in opposition to, or in support of, the staff's preliminary views.

At the July 18 scoping meeting in Boise, we will discuss approaches to evaluating cumulative impacts of the Idaho Power's eight relicense projects and cumulative impact issues associated with the eight projects.

Procedures

The meetings will be recorded by a court reporter and all statements (oral and written) will become a part of the official record of the Commission proceedings for the three projects. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

To help focus discussions at the scoping meeting, the FERC will mail a Scoping Document, outlining subject areas to be addressed in the EIS, to agencies and interested individuals on the project mailing list. Copies of the scoping document will also be available at the scoping meetings.

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. In addition, written scoping comments may be filed with the Office of the Secretary, Dockets Room 1A, Federal Energy Regulation Commission, 888 First Street, NE, Washington, D.C. 20426 until August 18, 1997. All written correspondence should clearly identify the appropriate projects on the first page: Project Nos. 503 (C.J. Strike), 2061–004 (Lower Salmon Falls), 2726 (Upper and Lower Malad), 2777–007 (Upper Salmon Falls), 2778 (Shoshone Falls).

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 service a copy of the document on that resource agency.

Site Visit

There will also be a tour of the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects on July 16, 1997. Attendees will meet at the Shoshone Falls overlook parking lot at 9:00 a.m. Please call Craig Jones, Idaho Power Company, at 208–388–2934, if you plan to attend no later than July 9, 1997.

For Further Information Contact: Alan Mitchnick, FERC–OHL (202) 219–2826.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15194 Filed 6–10–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–340112; FRL 5721–2]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on December 8, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may

at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This Notice announces receipt by the Agency of applications from registrants to delete uses in the 35 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before December 8, 1997 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. *Note: Registration numbers preceded by ** indicate a 30–day comment period.*

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000264–00325	SEVIN Brand 97.5% Manu facturing Concentrate Carbaryl Insecticide	Carbaryl	Avocados, grass for seed, maple trees forsap, oyster beds
000264–00328	SEVIN Brand Dust Base Carbaryl Insecticide	Carbaryl	Almonds, apples, apricots, avocados, cherries, chestnuts, citrus fruits, filberts, maple trees for sap, nectarines, olives, peaches, pecans, pistachios, plums pome fruits, prunes, trees, walnuts, oyster beds, grass for seed
000432–00566	SBP-1382/Chlorpyrifos Transparent Emulsion Spray	Chlorpyrifos; Resmethrin	Aircraft uses
000432–00567	SBP-1328/Chlorpyrifos Transparent Emulsion Dilutable Conc.	Chlorpyrifos; Resmethrin	Aircraft uses
000432–00568	UltraTEC Insecticide w/SBP-1382	Chlorpyrifos; Resmethrin	Aircraft uses
000432–00658	Chlorpyrifos/Esbiothrin Transparent Emulsion Spray	Chlorpyrifos; *d-trans*-Allethrin	Aircraft uses
000432–00659	Crossfire-D TEDC w/Chlorpyrifos/Esbiothrin	Chlorpyrifos; *d-trans*-Allethrin	Aircraft uses
000432–00660	UltraTEC Insecticide w/Chlorpyrifos TEDC	Chlorpyrifos	Aircraft uses
000432–00681	UlltraTEC Insecticide w/Chlorpyrifos/PY/PB TEDC	Chlorpyrifos; Piperonyl butoxide; Pyrethrins	Aircraft uses
000769–00624	SMCP Malathion 50%	Malathion	Beef cattle, dogs, cats, potatoes, plums, prunes, indoor uses, poultry
000769–00844	Pratt Malathion 50 Spray	Malathion	Indoor uses
000769–00957	Pratt Malathion 25W	Malathion	Ornamentals, flies, apples pears, citrus, cherries, peaches, plum, prunes, beets, broccoli, brussel sprouts, cabbage, cauliflower, kale, mustard greens, turnips, eggplant, peppers, potatoes, tomatoes
002935–00084	Malathion 25 Spray	Malathion	Apples, apricots, avocadoes, cherries, filberts, nectarines, peaches, pears, pecans, plums, prunes, quinces, asparagus, beans, beets, carrots, dandelions, eggplant, endive, garlic, leeks, parsley, parsnips, peas, peppers, salsify, shallots, spinach, swiss chard, water cress, cabbage, broccoli, brussel sprouts, kale, mustard greens, turnips, celery, citrus, grapes, lettuce, mushrooms, peppermint, spearmint, potatoes, tomatoes, cranberries, straw berries
004816–00707	Kicker	Piperonyl butoxide; Pyrethrins	Aircraft uses
010370–00059	Ford's Control Plus Roach Spray	Chlorpyrifos	Aircraft uses
010370–00061	Ford's Aquakill Plus Roach Spray	Chlorpyrifos; Resmethrin	Aircraft uses
010370–00147	Ford's 50% Malathion EC	Malathion	Household indoors, animals, animal quarters, stored grain, livestock, mushroom houses, greenhouses, plums, prunes
010370–00222	Ford's Ultra S.S.C. 12–2.5	Chlorpyrifos; Resmethrin	Aircraft uses

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
010370–00256	Malathion 57% EC	Malathion	Non-medicated cattle feed blocks, bagged citrus pulp, residual warehouse spray, stored grains, field or garden seeds, warehouses, livestock (hogs, sheep, goats, horses, beef & non- milking cattle) poultry, domestic pets (dogs & cats), plants processing dry milk, food handling establishments (food & non-food areas), forest trees, green houses, residential homes, christmas trees, fly & mosquito control, in & around culled fruit and vegetable dumps
011678–00045**	Pyrinex Technical	Chlorpyrifos	Indoor broadcast flea control, indoor total release fogger use, paint additive use (including manhole covers, direct application pet care product (shampoos, dips, sprays)
019713–00288	Drexel Malathion ULV	Malathion	Soybeans, sugarbeets, tomatoes, safflower
019713–00340	Green Devil Containing	Malathion	Dogs, pets, household pests
034704–00544	Cythion 5-F Insecticide	Malathion	Almonds, apples, grape vines, greenhouse vegetables, filberts, pears, peanuts, plums, prunes, quince, safflower, soybeans, tobacco, stored products, bagged citrus pulp, livestock, forestry, greenhouses, homes, dumps, processing plants, food establishments
039609–00001	Schultz Houseplants & Garden Insect Spray	Piperonyl butoxide; Pyrethrins	Jade plants, grapes
062719–00015**	Dursban F Insecticide Chemical	Chlorpyrifos	Indoor/outdoor pest control (domestic), pets & domestic animals (indoor), aquatic uses (aquatic food crop/aquatic non-food), paint additives, sewer manhole applications
062719–00044**	Dursban R Insecticide Chemical	Chlorpyrifos	Indoor/outdoor pest control (domestic), pets & domestic animals (indoor), aquatic uses (aquatic food crop/aquatic non-food), paint additives, sewer manhole applications
062719–00045**	Dursban 30 SEC Insecticide Concentrate	Chlorpyrifos	Indoor/outdoor pest control (domestic), pets & domestic animals (indoor), aquatic uses (aquatic food crop/aquatic non-food), paint additives, sewer manhole applications
062719–00066**	Dursban HF Insecticidal Concentrate	Chlorpyrifos	Indoor/outdoor pest control (domestic), pets & domestic animals (indoor), aquatic uses (aquatic food crop/aquatic non-food), paint additives, sewer manhole applications
062719–00078**	Dursban W Insecti	Chlorpyrifos	Indoor/outdoor pest cidal Chemical control (domestic), pets & domestic animals (indoor), aquatic uses (aquatic food crop/aquatic non-food), paint additives, sewer manhole applications
062719–00099	Trifluralin Technical	Trifluralin	Forage legumes
062719–00131	Treflan TR-10	Trifluralin	Forage legumes
062719–00225**	XRM-5222	Chlorpyrifos	Indoor/outdoor pest control (domestic), pets & domestic animals (indoor), aquatic uses (aquatic food crop/aquatic non-food), paint additives, sewer manhole applications
062719–00250	Treflan HFP	Trifluralin	Forage legumes
063310–00008	Rhizopon AA Water	Indole-3-butyric acid	Lawns, sod, golf Soluble Tablets greens, tees, fairways, greenhouses, field crops, field crop application timing, chemigation systems connected to public water systems, sprinkler chemigation
066222–00008	Farmrite Folpet 50–W	Folpet	Crabapples, leeks, shallots

Note: Registration numbers preceded by ** indicate a 30–day comment period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000264	Rhone-Poulenc Ag Co., P.O. Box 12014, T.W. Alexander Dr., Research Triangle Park, NC 27709.
000432	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
000769	SureCo, Inc., 10012 N. Dale Mabry, Ste. 221, Tampa, FL 33618.
002935	Wilbur-Ellis Company, 191 W. Shaw Ave., Suite 107, Fresno, CA 93704.
004816	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
010370	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
011678	Makhteshim-Agan of North America Inc., 551 Fifth Avenue., Suite 1100, New York, NY 10176.
019713	Drexel Chemical Co., P.O. Box 13327, 1700 Channel Ave., Memphis, TN 38113.
034704	Platte Chemical Co., P.O. Box 667, Greeley, CO 80632.
039609	Schultz Company, 14090 Riverport Dr., P.O. Box 173, Maryland Heights, MO 63043.
062719	DowElanco, 9330 Zionsville Rd., Indianapolis, IN 46268.
063310	Hortus USA Corp., P.O. Box 1956 Old Chelsea Sta., New York, NY 10113.
066222	Makhteshim-Agan of North America Inc., 551 Fifth Avenue, Suite 1100, New York, NY 10176.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 2, 1997.

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 97–14985 Filed 6-10-97; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 12, 1997, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

B. *Report*

—FCSBA Quarterly Report

C. *New Business Regulations*

—Other Financing Institutions [12 CFR part 614] (Proposed)

Dated: June 9, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–15421 Filed 6–9–97; 12:58 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on June 5, 1997, from 1:45 p.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matter considered at the meeting was:

Open Session

A. *New Business*

Dated: June 9, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–15422 Filed 6–9–97; 12:58 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the July 10, 1997 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board

will hold a special meeting at 9:00 a.m. on Tuesday, July 22, 1997. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: June 9, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–15423 Filed 6–9–97; 12:58 pm]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

SUNSHINE ACT MEETING

* * * * *

Federal Register Number: 97–14897.

Previously announced date & time:

Tuesday, June 10, 1997 at 10:00 a.m. Meeting closed to the public.

Additional item to be discussed: Report containing privileged or confidential financial or commercial information. (11 C.F.R. § 2.4(b)(2)).

Thursday, June 12, 1997 at 10:00 a.m. Meeting open to the public.

The following item was added to the agenda: Petitions for Ruelmaking on Soft Money; Substitute Draft Notice of Availability.

* * * * *

DATE AND TIME: *Tuesday, June 17, 1997 at 10:00 a.m.*

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: *Wednesday, June 18, 1997 at 9:30 a.m.*

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor)

STATUS: This hearing will be open to the public.

Matter before the Commission: Notice of Proposed Rulemaking regarding coordinated and independent expenditures by party committees.

* * * * *

DATE AND TIME: *Thursday, June 19, 1997 at 10:00 a.m.*

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor)

STATUS: This Meeting will be open the the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Report of the Audit Division on Alexander for President, Inc.

Advisory Opinion 1997–06: Kay Bailey Hutchison for Senate Committee, Kenneth W. Anderson, Jr., Treasurer.

Administrative Matters.

Person to contact for information: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–15453 Filed 6–9–97; 2:59 pm]

BILLING CODE 6715–01–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. Once the notices have been accepted for processing, they will also 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 June 26, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Susma Patel, London, England; Suketu Madhusudan Patel (Suku), London, England; Parimal Kantibhai Patel (Perry), London, England; Bharat Muljibhai Amin, London, England; and Dennis John Lloyd King, Surrey, England; collectively, as the Patel Group, each to acquire up to 50 percent of the voting shares of First Bankshares, Inc., Longwood, Florida, and thereby indirectly acquire First National Bank of Central Florida, Longwood, Florida.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. James A. Espeland, Henning, Minnesota; to acquire an additional .04 percent, for a total of 31.32 percent, of the voting shares of Henning Bancshares, Inc., Henning, Minnesota, and thereby indirectly acquire First National Bank of Henning, Henning, Minnesota, and First National Bank of Battle Lake, Battle Lake, Minnesota.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. George H. Moyer, Jr., Madison, Nebraska; to acquire an additional 13.30 percent, for a total of 28.09 percent, and Jon M. Moyer, Madison, Nebraksa, to acquire an additional 12.84 percent, for a total of 31.83 percent, of the voting shares of Madison Bancshares, Inc., Madison, Nebraska, and thereby indirectly acquire The Bank of Madison, Madison, Nebraksa.

Board of Governors of the Federal Reserve System, June 6, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–15269 Filed 6–10–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. 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 7, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. The Union Illinois 1995 Investment Limited Partnership, Swansea, Illinois; to acquire at least a total of 13.18 percent, and up to a total of 18.22 percent, of the voting shares of Union Illinois Company, Swansea, Illinois, and thereby indirectly acquire Union Bank of Illinois, Swansea, Illinois, and State Bank of Jerseyville, Jerseyville, Illinois.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. New Prague Bancshares, Inc., New Prague, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Community Security Bank, New Prague, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 5, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–15270 Filed 6–10–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 972–3187]

Sears, Roebuck and Co.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 11, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3224. Paul Block, Boston Regional Office, Federal Trade Commission, 101 Merrimac Street, Suite 810, Boston, MA 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for June 4, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Sears, Roebuck and Co. The proposed respondent is a large national retailer that sells a wide variety of products and services.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint alleges several unfair or deceptive acts or practices related to the proposed respondent's policy of inducing consumers who have filed for bankruptcy protection to sign agreements reaffirming debts owed to proposed respondent prior to the filing of the bankruptcy petition. The complaint charges that the proposed respondent: falsely represented to consumers that signed reaffirmation agreements would be filed with the bankruptcy courts, as required by the United States Bankruptcy Code; falsely represented to consumers that debts associated with unfiled reaffirmation agreements, or agreements that were filed but not approved by the bankruptcy courts, were legally binding on the consumers; and unfairly collected debts that it was not permitted by law to collect. The proposed consent order contains provisions designed to remedy the violations charged and to prevent the proposed respondent from engaging in similar acts in the future.

The proposed consent order preserves the Commission's right to seek consumer redress if the Commission determines that redress to consumers provided through related named and unnamed legal actions is not adequate.

Part I of the proposed order prohibits the proposed respondent from misrepresenting to consumers who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that (A) Reaffirmation agreements will be filed in bankruptcy court; or (B) any reaffirmation agreement is legally binding on the consumer. Part I.C of the proposed order prohibits the proposed respondent from collecting any debt (including any interest, fee, charge, or expense incidental to the principal obligation) that has been legally discharged in bankruptcy proceedings and that the proposed respondent is not permitted by law to collect. Part II of the proposed order prohibits the proposed respondent from making any material misrepresentation in the collection of any debt subject to a pending bankruptcy proceeding.

Part III of the proposed order contains record keeping requirements for materials that demonstrate the compliance of the proposed respondent with the proposed order. Part IV requires distribution of a copy of the consent decree to certain current and future principals, officers, directors, managers, and representatives.

Part V provides for Commission notification upon any change in the corporate respondent affecting compliance obligations arising under the order. Part VI requires the proposed respondent to notify the Commission of proposed settlement terms in related actions filed by various named and unnamed parties. Part VII requires the filing of compliance report(s). Finally, Part VIII provides for the termination of

the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–15282 Filed 6–10–97; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 757]

National Institute for Occupational Safety and Health; Epidemiologic Studies To Evaluate Health Effects of Uranium Milling; Notice of Availability of Funds for Fiscal Year for 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for a cooperative agreement program to design and conduct epidemiologic studies evaluating the health effects of uranium milling.

CDC 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 Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

This program is authorized under Section 501 of the Federal Mine Safety and Health Act (30 U.S.C. 951).

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse 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

Applications may be submitted by public and private, non-profit and for-profit organizations and governments, and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority-and/or women-owned businesses are eligible to apply.

Note: Public Law 104–65, dated December 19, 1995, prohibits an organization described in section 501(c)(4) of the IRS Code of 1986, that engages in lobbying activities to influence the Federal Government, from receiving Federal funds.

Availability of Funds

Approximately $300,000 is available in FY 1997 to fund one award. It is expected that the award will begin on or about September 1, 1997, and will be made for a 12-month budget period with a one year project period.

Preapplication Teleconference

Applicants are invited by CDC/NIOSH to attend a preapplication technical assistance teleconference on Monday, June 16, 1997, at 2:00 p.m.(EDT) to discuss the programmatic issues and time constraints regarding this program, and to ask question regarding its content. This teleconference is expected to last approximately one hour. All conference calls are scheduled on Eastern time. The conference name is ''Uranium Millers Technical Assistance''. The telephone bridge number for Federal participants is 404/639–4100 and for Non-Federal participants it is 800/713–1971. Participants will need the conference code, 575934, to be connected.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before State legislatures. This new law, Section 503 of Pub. L. No. 104–208, provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Pub. L. No. 104–208 (September 30, 1996).

Background

The National Institute for Occupational Safety and Health (NIOSH) is developing and conducting a study of the health effects associated with uranium milling and will be awarding cooperative agreement funds to support this effort.

NIOSH is conducting this research pursuant to an agreement with the United States Army Environmental Hygiene Agency in follow-up to a 1994 Congressional mandate to the Department of Defense. Public Law 103–139 provides that the Department of Defense shall conduct ''* * * a study of the health effects of uranium milling, including the effects of exposure to radon chemicals and uranium, on the health of those individuals employed in uranium mills in the southwestern United States during the period beginning on January 1, 1947, and ending on December 31, 1971.''

NIOSH has been evaluating available personnel and exposure records for uranium mills which operated in Colorado, New Mexico, Utah, and Arizona between 1947 and 1971 to determine which types of epidemiologic studies of the health effects of uranium milling would be feasible given the

nature and extent of records available on uranium milling operations. To date, NIOSH has determined that a cross sectional study of renal and/or pulmonary disease among uranium millers would be feasible. In addition, such a study is scientifically appropriate since prior research has indicated that uranium millers may be at increased risk of renal disease and non-malignant respiratory disease.

Purpose

The purpose of this cooperative agreement is to utilize the special resources of the research community to conduct studies evaluating the renal and/or pulmonary health effects of uranium milling, including the effects of exposure to uranium dust, silica dust, inorganic acids, organic solvents, and ionizing radiation. The project results should be applicable to individuals employed in uranium mills in the southwestern United States between January 1, 1947 and December 31, 1971. This project could include: (a) A morbidity study of renal disease, (b) a morbidity study of non-malignant respiratory disease, and/or (c) a morbidity study of other health outcomes if substantial justification is given for evaluating other endpoints. Personnel and/or exposure records from U.S. uranium mills may be utilized to the extent available. The recipient should develop an epidemiologic study design which specifies the methods that will be used to select former uranium millers and a non-uranium miller comparison group for the study.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for activities under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop a study to evaluate the health effects of uranium milling among individuals employed in uranium mills in the southwestern United States during the period between January 1, 1947, and December 31, 1971.

2. Evaluate potential sources of recruitment of uranium millers including company records, the registry kept by the Office of Navajo Uranium Workers, and other sources in order to propose a recruitment strategy.

3. Develop a final study protocol that reviews the pertinent literature on potential health effects of uranium milling and historical exposure data, describes the study methodology including the selection of an unexposed (non-uranium miller) comparison group, the data to be collected, and the proposed analysis of the data.

4. Present the protocol to a panel of scientific peer reviewers and revise the protocol as required for final approval.

5. Perform data collection and management. Data collected may include worker symptomatology, results of medical tests evaluating renal and/or pulmonary function, and available exposure data.

6. Conduct statistical analyses of the data collected.

7. Report study results to the scientific community via presentations at professional conferences and articles in peer-reviewed journals. All reports should undergo appropriate scientific peer review prior to public release.

8. Maintain the confidentiality of individually identifiable data. Provide written assurance to the CDC that there are adequate technical and administrative safeguards in place to protect the confidentiality of such records and that the confidentiality of the records will be maintained.

9. Notify study participants of their individual and overall study results.

B. CDC/NIOSH Activities

1. Provide technical assistance with program development, implementation, maintenance, priority setting, evaluation efforts, and information and dissemination activities.

2. Provide scientific, epidemiologic, and medical collaboration for the successful completion of this project.

3. Provide, obtain, and/or assist in obtaining available personnel and/or exposure records from uranium mills located in the southwestern United States that operated during the period between January 1, 1947 and December 31, 1971.

4. Assist in reporting study results to the scientific community via presentations at professional conferences and articles in peer-reviewed journals. Assist, if needed, in reporting individual and overall study results to study participants.

Technical Reporting Requirements

An original and two copies of semi-annual progress reports are required. Timelines for the semi-annual reports will be established at the time of award. Final financial status and performance reports are required no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

Semi-annual progress report should include:

A. A brief program description.

B. A listing of program goals and objectives accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period.

C. If established goals and objectives to be accomplished were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

D. Other pertinent information, including the status of completeness, timeliness and quality of data.

Final Report summarizing the methodology; results obtained, conclusions reached, and recommendations regarding effectiveness and costs of components of the Epidemiologic Studies to Evaluate Health Effects of Uranium Milling program.

Application Content

The entire application, including appendices, should not exceed 40 pages and the Proposal Narrative section contained therein should not exceed 25 pages. Pages should be clearly numbered and a complete index to the application and any appendices included. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½″ by 11″ paper, with at least 1″ margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets.

The applicant should provide a detailed budget, with accompanying justification of all operating expenses, that is consistent with the stated objectives and planned activities of the project. CDC may not approve or fund all proposed activities. Applicants should be precise about the program purpose of each budget item. For contracts described within the application budget, applicants should name the contractor, if known; described the services to be performed and provide an itemized breakdown and justification for the estimated cost of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. Place budget narrative pages showing, in detail, how funds in each object class will be spent, directly behind form 424A. Do not put these pages in the body of the application.

The applicant should provide a detailed description of all activities.

A. Title Page

The heading should include the title of the program, project title, organization, name and address, project director's name and telephone number.

B. Abstract

A one page, singled-spaced, typed abstract must be submitted with the application. The heading should include the title of grant program, project title, organization, name and address, project director and telephone number. This abstract should include a work plan identifying activities to be developed, activities to be completed, and a timeline for completion these activities.

C. Proposal Narrative

The narrative of each application must:

1. Briefly state the applicant's understanding of the need or problem to be addressed and the purpose of this cooperative agreement. This should be reflected in a draft protocol for the study.
2. Describe clearly the objectives, the steps to be taken in planning and implementing this project, and the respective responsibilities of the applicant for carrying out those steps. Provide timelines for accomplishing each objective and a method of evaluating the activities.
3. Inclusion of women, ethnic, and racial groups: Describe how the CDC policy requirements will be met regarding the inclusion of women, ethnic, and racial groups in the proposed research. (See Women, Racial and Ethnic Minorities in the Evaluation Criteria and Other Requirements sections.)
4. Provide documentation of access to potential study sites with the sample characteristics specified in the Program Requirements Section, and provide documentation of anticipated involvement of management, labor, and community representatives in the study.
5. Document the applicant's expertise in the area of occupational health, industrial hygiene, health physics, and project management.
6. Document the applicant's ability to provide staff, knowledge, and other resources required to perform the responsibilities in this project.
7. Provide the name, qualifications, and proposed time allocation of the Project Director who will be responsible for administering the project. Describe staff, experience, facilities, equipment available for performance of this project, and other resources that define the applicant's capacity or potential to accomplish the requirements stated above. List the names (if known), qualifications, and time allocations of the existing professional staff to be assigned to (or recruited for) this project, the support staff available for performance of this project, and the available facilities including space.
8. Human Subjects: State whether or not Humans are subjects in this proposal. (See Human Subjects in the Evaluation Criteria and Other Requirements sections.)
9. Provide a detailed budget which indicates: (a) Anticipated costs for personnel, travel, communications, postage, equipment, supplies, etc., and (b) all sources of funds to meet those needs.
10. Provide a detailed security plan to ensure that there are reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of records.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

A. Understanding of the Problem (15%)

Responsiveness to the purpose of this announcement including:

1. Applicant's understanding of the general objectives, and
2. Evidence of the ability to understand the problem and to propose effective methodologies for evaluating renal and/or pulmonary effects.

B. Program Personnel (30%)

1. Applicant's technical experience (e.g., in the areas of occupational health, industrial hygiene, health physics, and project management),
2. The qualifications (e.g., in the areas of industrial hygiene, health physics, and occupational safety and health) and time allocation of the professional staff to be assigned to this project, and
3. The applicant's ability to describe the approach to be used in carrying out the responsibilities of the applicant in this project.

C. Study Design (30%)

1. Steps proposed in planning and implementing this project and the respective responsibilities of the applicant for carrying out those steps,
2. The adequacy of the applicant's evidence of access to study populations, and
3. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

D. Project Planning and Evaluation (15%)

The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable. The extent to which the methods are sufficiently detailed to allow assessment of whether the objectives can be achieved for the budget period. Clearly stated evaluation method for evaluating the accomplishments and a detailed security plan to safeguard and prevent disclosure of records. The extent to which a qualified plan is proposed that will help achieve the goals stated in the proposal.

E. Facilities and Resources (10%)

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

F. Human Subjects (Not Scored)

Whether or not exempt from the Department of Health and Human Services (DHHS) regulations, are procedures adequate for the protection of human subjects? Recommendations on the adequacy of protections include: (1) Protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

G. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

This program is not subject to Executive Order 12372 review.

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 Domestic Assistance number for this project is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by this cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Application Submission and Deadline

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to Victoria F. Sepe, Grants Management Specialist, Grants Management Branch, CDC at the address listed in this section. It should be postmarked no later than July 11, 1997. The letter should identify the Program Announcement number 757 and the name of principal investigator. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Application

The original and four copies of the application PHS Form 398 (Revised 5/95, OMB Number 0925–0001) must be submitted to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305, on or before July 25, 1997.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applicants: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicants.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to NIOSH Announcement 757. 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.

Please refer to Announcement Number 757 when requesting information and submitting an application.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, Room 321, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, telephone (404) 842–6804, Internet: vxw1@cdc.gov.

Programmatic technical assistance may be obtained from Lynne E. Pinkerton, M.D., M.P.H., Medical Officer, Epidemiology 1 Section, Industrywide Studies Branch, Division of Surveillance, Hazard Evaluations, and Field Studies, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Mailstop R–15, 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 841–4344, Internet: lep5@.cdc.gov.

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 section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

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 4, 1997.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–15179 Filed 6–10–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 738]

National Institute for Occupational Safety and Health; Assessment of Respiratory Exposure Hazards in Composting

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997

funds for a cooperative agreement to conduct cross-sectional studies at composting facilities of respiratory exposures and respiratory health effects among compost workers.

CDC 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 Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.)**

CDC, National Institute for Occupational Safety and Health (NIOSH) is committed to the program priorities developed by the National Occupational Research Agenda (NORA). (For ordering a copy of the NORA, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a) and 671(e)(7)).

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse 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

Applications may be submitted by public and private, non-profit and for-profit organizations and governments, and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Note: Public Law 104–65, dated December 19, 1995, prohibits an organization described in section 501(c)(4) of the IRS Code of 1986, that engages in lobbying activities to influence the Federal Government, from receiving Federal funds.

Availability of Funds

Approximately $200,000 will be available in FY 1997 to fund up to two awards at approximately $100,000 each. It is expected that the awards will begin on or about September 30, 1997, and will be made for 12-month budget periods within the project period of up to 3 years. The funding estimate is subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before State legislatures. This new law, Section 503 of Pub. L. No. 104–208, provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Pub. L. No. 104–208 (September 30, 1996).

Background

Composting is the decomposition of organic materials under aerobic conditions which produces a stable, humus-like material which can be used as a soil amendment. Materials composted can include yard waste, food/household waste, food processing waste, agricultural wastes, biosolids, and animal wastes. The recycling of biosolids and the organic fractions of municipal solid waste is increasing because of the benefits that can arise and because the disposal alternatives such as land filling and incineration are more costly, unpopular, or restricted by law. The consequence of this is a dramatic increase in the number of composting operations and the number of workers exposed to organic dusts at these facilities. The proceedings from a national composting council workshop indicate that there were approximately 2500 composting facilities operating in the United States during 1992 with a large expected growth rate (over 45 percent) in the number of composting facilities during subsequent years. The rapid growth in this industry, combined with the potential for worker exposure to organic dusts containing many toxic and immunogenic constituents, indicates the need for studies to address potential respiratory health problems among workers in this industry. Upper respiratory tract irritation, organic dust toxic syndrome (ODTS), asthma, bronchitis, and hypersensitivity pneumonitis are among the respiratory health problems described to occur from organic dust exposures such as those associated with composting.

Composting is an emerging technology area. Under the NIOSH National Occupational Research Agenda (NORA), emerging technologies represent a priority area for research efforts to (1) Assess their potential to cause harm to workers, (2) evaluate specific worksites, (3) develop effective control strategies where occupational hazards exist, (4) identify superior new technologies that diminish risk, and (5) share information for the benefit of all persons at risk and those responsible for managing the risk.

This project addresses many of these emerging technology criteria described in NORA.

Purpose

The purpose of this project is to conduct research to identify potential exposure hazards and respiratory health problems among workers in the composting industry. This information

will be used to promote respiratory health for this workforce and direct prevention efforts as appropriate.

The specific objectives for this cooperative agreement program include the following: develop a research protocol(s) for a cross-sectional study of respiratory exposures and respiratory health effects among workers employed at composting facilities; conduct in-depth environmental investigations of respiratory exposure hazards at selected composting facilities; conduct in-depth clinical investigations on the respiratory health status of workers at selected composting facilities; and describe the composting processes used at each survey site including the control procedures used to reduce worker exposures.

Note: Protocols should exclude sampling sites in Department of Health and Human Services (DHHS) Region VII from the sample (DHHS Region VII includes the following States: Iowa, Kansas, Missouri, and Nebraska). This exclusion is to avoid duplication with ongoing composting research efforts completed through the NIOSH funded Centers for Agriculture Research, Education and Disease Injury and Prevention in DHHS Region VII.

Program Requirements

In conducting activities to achieve the purpose of this agreement, the recipient will be responsible for conducting activities under A. (Recipient Activities) below, and CDC/NIOSH will be responsible for conducting activities under B. (CDC/NIOSH Activities) below:

A. Recipient Activities

1. Develop a research protocol(s) for a cross-sectional study of respiratory exposures and respiratory effects among workers employed at composting facilities. Obtain scientific peer review of the protocol(s), revise, and finalize the protocol(s).

2. Conduct a comprehensive environmental investigation of respiratory exposure hazards at selected composting facilities. Personal and area environmental sampling data collected from each of these facilities should include, at a minimum, particulate not otherwise regulated (formerly known as ''total dust''), metals, endotoxins, viable microorganisms, and ammonia.

3. Conduct in-depth clinical investigations on the respiratory health status of workers at selected composting facilities. Study design should take into account sources of bias in particular the problems encountered when limiting the study to current employees. Clinical investigations should include, at a minimum:

a. The development and administration of a questionnaire designed to gather information on work and exposure history and respiratory health effects. The questionnaire should be administered to all members of this study population.

b. The development and implementation of a pulmonary function testing program appropriate to the investigation of respiratory health effects among compost workers at selected facilities.

4. Clarify the composting processes used at each survey site including the control procedures used to reduce worker exposures.

5. Collaborate with CDC/NIOSH scientists on study research efforts.

6. Report and disseminate, if desired, research results and relevant health and safety education and training information to appropriate health care providers, the scientific community, agricultural workers and their families, management and union or other worker representatives, and Federal, State, and local agencies. Emphasis should be placed on the rapid dissemination of significant public health findings and the translation of research findings into prevention efforts.

B. CDC/NIOSH Activities

1. Provide technical assistance in the areas of program development and study research efforts, implementation, maintenance.

2. Provide technical assistance, if needed, related to the development and implementation of the pulmonary function testing program.

3. Provide technical assistance, if needed, related to the collection, review and/or analysis of data.

4. Collaborate in the reporting and dissemination of research results and relevant health and safety education and training information.

Technical Reporting Requirements

An original and two copies of semi-annual progress reports are required. Timelines for the semi-annual reports will be established at the time of award. Final financial status and performance reports are required no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

Semi-annual progress report should include:

A. A brief program description.

B. A listing of program goals and objectives accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period.

C. If established goals and objectives to be accomplished were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

Application Content

The entire application, including appendices, should not exceed 40 pages and the Proposal Narrative section contained therein should not exceed 25 pages. Pages should be clearly numbered and a complete index to the application and any appendices included. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½'' by 11'' paper, with at least 1'' margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets.

The applicant should provide a detailed budget, with accompanying justification of all operating expenses, that is consistent with the stated objectives and planned activities of the project. CDC may not approve or fund all proposed activities. Applicants should be precise about the program purpose of each budget item. For contracts described within the application budget, applicants should name the contractor, if known; described the services to be performed and provide an itemized breakdown and justification for the estimated cost of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. Place budget narrative pages showing, in detail, how funds in each object class will be spent, directly behind form 424A. Do not put these pages in the body of the application.

The applicant should provide a detailed description of first-year activities and briefly describe future-years objectives and activities.

A. Title Page

The heading should include the title of grant program, project title, organization, name and address, project director's name address and telephone number.

B. Abstract

A one page, singled-spaced, typed abstract must be submitted with the application. The heading should include the title of grant program, project title, organization, name and address, project director and telephone number. This abstract should include a work plan identifying activities to be developed, specific activities to be

completed, and a time-line for completion these activities.

C. Proposal Narrative

The narrative of each application must:

1. Briefly state the applicant's understanding of the need or problem to be addressed and the purpose of this cooperative agreement. This should include a draft protocol for the study. The protocol(s) should include:

(a) A sampling strategy to insure that a representative sample of composting operations and technologies are included in the study, and

(b) The sampling strategy should maximize the number of study sites and include a representative sample based on geographic considerations.

2. (a) Describe clearly the objectives of this project, the steps to be taken in planning and implementing this project, and the respective responsibilities of the applicant for carrying out those steps.

(b) Provide a proposed schedule for accomplishing each of the activities to be carried out in this project and a method of evaluating the accomplishments.

3. Provide documentation of access to potential study sites with the sample characteristics specified, and provide documentation of management and labor representatives to participate in the intervention study.

4. Document the applicant's expertise in the area of exposure and health assessment as they pertain to occupational safety and health.

5. Provide the name, qualifications, and proposed time allocation of the Project Director who will be responsible for administering the project. Describe staff, experience, facilities, equipment available for performance of this project, and other resources that define the applicant's capacity or potential to accomplish the requirements stated above. List the names (if known), qualifications, and time allocations of the existing professional staff to be assigned to (or recruited for) this project, the support staff available for performance of this project, and the available facilities including space.

6. Human Subjects: State whether or not Humans are subjects in this proposal. (See *Human Subjects* in the Evaluation Criteria and Other Requirements sections.)

7. Inclusion of women, ethnic, and racial groups:

Describe how the CDC policy requirements will be met regarding the inclusion of women, ethnic, and racial groups in the proposed research. (See *Women, Racial and Ethnic Minorities* in the Evaluation Criteria and Other Requirements sections.)

8. Provide a detailed budget which indicates: (a) anticipated costs for personnel, travel, communications, postage, equipment, supplies, etc., and (b) all sources of funds to meet those needs.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Background and Need (20%)

Responsiveness to the purpose of this project, including the applicant's understanding of the objectives of the proposed cooperative agreement and the relevance of the proposal to the objectives.

B. Goals, Objectives and Methods (25%)

1. The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable. The extent to which the methods are sufficiently detailed to allow assessment of whether the objectives can be achieved for the budget period. The extent to which a qualified plan is proposed that will help achieve the goals stated in the proposal.

2. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; and (d) A statement as to whether the plan for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

C. Strength of Programs (20%)

Strength of the applicant's environmental and clinical research programs including a demonstrated ability in the conduct of occupational health studies involving organic dusts, gases, and respiratory health assessment.

D. Project Management and Staffing Plan (20%)

Training and experience, qualifications, and time commitment of the project director, staff, and organization. This includes a Project director who is a distinguished scientist and technical expert and staff with the necessary training and experience sufficient to accomplish proposed project.

E. Experience/Expertise (10%)

Applicant's knowledge/understanding and experience in the composting industry.

F. Facilities and Resources (5%)

Efficiency of resources and novelty of program. This includes the efficient use of existing and proposed personnel with assurances of a major time commitment of the Project Director to the program and the novelty of program approach.

G. Human Subjects (Not Scored)

Whether or not exempt from the DHHS regulations, are procedures adequate for protection of human subjects? Recommendations on the adequacy of protections include: (1) Protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

H. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications 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 be sent to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers

for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305, no later than September 1, 1997. The Program Announcement Number 738 and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Centers for Disease Control and Prevention, 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, GA 30305. This should be done no later than September 1, 1997. The granting agency does not guarantee to ''accommodate or explain'' for tribal 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 Domestic Assistance Number for this program is 93.262.

Other Requirements

Paperwork Reduction Act

Projects funded through the cooperative agreement mechanism of this program involving the collection of information from 10 or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Women and Minority Inclusion Policy

It is the policy of the Centers of Disease Control and Prevention (CDC) to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority population are appropriately represented for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance on this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadline

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, CDC at the address listed in this section. It should be postmarked no later than July 1, 1997. The letter should identify Program Announcement 738 and name of the principal investigator. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Application

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305, on or before July 18, 1997.

1. *Deadline:* Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. *Late Applicants:* Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered and will be returned to the applicants.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to NIOSH Announcement 738. 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. Please refer to NIOSH Announcement Number 738 when requesting information and submitting an application.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, Room 321, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, telephone (404) 842–6804, Internet: vxw1@cdc.gov.

Programmatic technical assistance may be obtained from Patrick Hintz, M.S., Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Mailstop P04/111, 1095 Willowdale Road, Morgantown, WV 26505–2888, telephone (304) 285–5744, Internet: pjhl@cdc.gov.

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.

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** section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

The National Occupational Research Agenda: copies of this publication may be obtained from the National Institute for Occupational Safety and Health, Publications Office, 4676 Columbia Parkway, Cincinnati, OH 45226–1998 or telephone 1–800–356–4674, and is available through the NIOSH Home Page; http://www.cdc.gov/niosh/nora.html.

NORA Priority Research Areas

Disease and Injury

- Allergic and Irritant Dermatitis
- Asthma and Chronic Obstructive Pulmonary Disease
- Fertility and Pregnancy Abnormalities
- Hearing Loss
- Infectious Diseases
- Low Back Disorders
- Musculoskeletal Disorders of the Upper Extremities
- Traumatic Injuries

Work Environment and Workforce

- Emerging Technologies
- Indoor Environment
- Mixed Exposures
- Organization of Work
- Special Populations at Risk

Research Tools and Approaches

- Cancer Research Methods
- Control Technology and Personal Protective Equipment
- Exposure Assessment Methods
- Health Services Research
- Intervention Effectiveness Research
- Risk Assessment Methods
- Social and Economic Consequences of Workplace Illness and Injury
- Surveillance Research Methods

Dated: June 4, 1997.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–15180 Filed 6–10–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0212]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the electronic collection of data by FDA regarding FDA-regulated products of foreign origin that are being offered for import into the United States.

DATES: Submit written comments on the collection of information by August 11, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Importer's Entry Notice—(OMB Control Number 0910–0046)—Extension

Section 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381) charges FDA with the following responsibilities: (1) Assuring that foreign-origin FDA-regulated foods, drugs, cosmetics, medical devices, and radiological health products offered for import into the United States meet the same requirements of the act as do domestic products; and (2) preventing shipments from entering the country if they are not in compliance.

The information collected by FDA consists of the following: (1) Product code, an alpha-numeric series of characters that identifies each product FDA regulates; (2) FDA country of origin, the country where the FDA-registered or FDA-responsible firm is located; (3) FDA manufacturer, the party who manufactured, grew, assembled, or otherwise processed the goods (if more than one, the last party who substantially transformed the product); (4) shipper, the party responsible for packing, consolidating, or arranging the shipment of the goods to their final destination; (5) quantity and value of the shipment; and (6) if appropriate, affirmation of compliance, a code that conveys specific FDA information, such as registration number, foreign government certification, etc. This information is collected electronically by the entry filer via the U.S. Customs Service's Automated Commercial System at the same time he/she files an entry for import with the U.S. Customs Service. FDA uses the information to make admissibility decisions about

FDA-regulated products offered for import into the United States.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
2,505	1,212.54	3,037,426	0.07 h	229,693

There are no capital costs or operating and maintenance costs associated with this collection.

The source of the estimate for the number of respondents is the number of importers who submitted entry data for foreign-origin FDA-regulated products in 1996. The estimated reporting burden is based on information obtained by contacting several past respondents.

Dated: June 3, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–15168 Filed 6-10-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97G–0219]

Beatrice Foods, Inc.; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 5G0047) proposing that the use of magnesium caseinate for use as an ingredient for making cheese alternate products which can be blended with natural cheese or used alone as a total substitute for cheese be affirmed as generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFS–206),Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3090.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 4, 1975 (40 FR 5180), FDA announced that a petition (GRASP 5G0047) had been filed by Beatrice Foods Co., Inc., 1526 South State St., Chicago, IL 60605. This petition proposed that the use of magnesium caseinate for use as an ingredient for making cheese alternate products which can be blended with natural cheese or used alone as a total substitute for cheese is GRAS.

Beatrice Foods Co., Inc., of Chicago, the submitter of the original GRAS affirmation petition no longer exists. Beatrice Cheese Inc., 770 North Springdale Rd., Waukesha, WI, 53180, which was formerly part of Beatrice Foods Co., Inc., indicated that the proposed use had been abandoned and acknowledged that the agency should close the petition file and withdraw the petition. Therefore, the agency is announcing that it considers this petition to be withdrawn, without prejudice to a future filing, in accordance with 21 CFR 171.7.

Dated: May 12, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–15313 Filed 6–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0186]

Millenium Medical Supply, Inc.; Premarket Approval of Needle-Ease™ 2501

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by Louise N. Howe of the law firm HALE and DORR, as the U.S. Representative on behalf of Millenium Medical Supply, Inc., Ontario, Canada, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Needle-Ease™ 2501. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 6, 1997, of the approval of the application.

DATES: Petitions for administrative review by July 11, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913.

SUPPLEMENTARY INFORMATION: On December 6, 1996, Louise N. Howe of the law firm HALE and DORR, as the U.S. Representative on behalf of Millenium Medical Supply, Inc., Ontario, Canada, N3T 5M1, submitted to CDRH an application for premarket approval of Needle-Ease™ 2501. This device is a sharps needle destruction device that is intended for home use by diabetics to reduce the incidence of needlesticks by the incineration of 28–30 gauge needles, 29 and 30 gauge diabetic ''pen tips,'' and 23–26 gauge diabetic lancets.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On March 6, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity For Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under

section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 11, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 22, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–15167 Filed 6–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Product, Establishment, and Biologics License Applications, Refusal to File; Meeting of Oversight Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the remaining 1997 meetings of its standing oversight committee in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications (PLA's), establishment license applications (ELA's), and biologics license applications (BLA's). CBER's RTF oversight committee examines all RTF decisions which occurred during the previous quarter to assess consistency across CBER offices and divisions in RTF decisions.

DATES: The next meetings will be held on July 8, 1997, and October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–5), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 15, 1995 (60 FR 25920), FDA announced the establishment and first meeting of CBER's standing oversight committee. As explained in the notice, the importance to the public health of getting new biological products on the market as efficiently as possible has made improving the biological product evaluation process an FDA priority. CBER's managed review process focuses on specific milestones or intermediate goals to ensure that a quality review is conducted within a specified time period. CBER's RTF oversight committee continues CBER's effort to promote the timely, efficient, and consistent review of PLA's, ELA's, and BLA's.

FDA regulations on filing PLA's, ELA's, and BLA's are found in 21 CFR 601.2 and 601.3. A sponsor who receives an RTF notification may request an informal conference with CBER, and thereafter may ask that the application be filed over protest, similar to the procedure for drugs described under 21 CFR 314.101(a)(3).

CBER's standing RTF oversight committee consists of senior CBER officials, a senior official from FDA's Center for Drug Evaluation and Research, and FDA's Chief Mediator and Ombudsman. Meetings will ordinarily be held once a quarter to review all of the RTF decisions. The purpose of such a review is to assess the consistency within CBER in rendering RTF decisions. If there are no RTF decisions to review, however, the meeting may be cancelled. FDA intends to post any meeting cancellation on the CBER home page at http://www.fda.gov/cber/confmeet.htm. Publication of any meeting cancellation will be made only as time permits.

Because the committee's deliberations will deal with confidential commercial information, all meetings will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain confidential commercial information, summaries of the committee's deliberations, with all such confidential commercial information omitted, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If, following the committee's review, an RTF decision changes, the appropriate division within CBER will notify the sponsor.

Dated: June 4, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–15165 Filed 6–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program Regulations—42 CFR part 60—0915–0108—Extension, No Change

This clearance request is for extension of approval for the notification, reporting and recordkeeping requirements in the HEAL program to insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under this OMB number, much of the burden associated with the regulations is cleared under the OMB numbers for the HEAL forms used to report required information (listed below). The table listed at the end of this notice contains the estimate of burden for the remaining regulations.

Annual Response Burden for the following regulations is cleared by OMB when the reporting forms are cleared:

OMB Approval No. 0915–0034, Lender's Application, Borrower Status, Manifest, Loan Transfer, Contract for Loan Insurance:

Reporting
- 42 CFR 60.7(c)(3), Employer certification of nonstudent status
- 42 CFR 60.31(a), Lender annual application
- 42 CFR 60.38(a), Loan reassignment

Notification
- 42 CFR 60.12(c)(1), Borrower deferment

OMB Approval No. 0915–0036, Lender's Application for Insurance Claim:

Reporting
- 42 CFR 60.35(a)(2), Lender skip-tracing activities
- 42 CFR 60.40(a), Lender documentation to litigate a default
- 42 CFR 60.40(c)(1) (i), (ii), and (iii), Lender default claim
- 42 CFR 60.40(c)(2), Lender death claim
- 42 CFR 60.40(c)(3), Lender disability claim
- 42 CFR 60.40(c)(4), Lender report of student bankruptcy

OMB Approval No. 0915–0038, Student Application

Reporting
- 42 CFR 60.7(a)(1)(ii), Student application
- 42 CFR 60.7(a)(3), School section of the application
- 42 CFR 60.51(a), School section of the application

Notification
- 42 CFR 60.7(a)(2), Federal debt collection policies—student
- 42 CFR 60.33(c), Creditworthiness of applicant

OMB Approval No. 0915–0043, Promissory Note, Repayment Schedule, Call Report

Notification
- 42 CFR 60.7(c)(2) Federal debt collection policies—nonstudent
- 42 CFR 60.11(e), Establishment of repayment terms—borrower
- 42 CFR 60.11(f)(5), Borrower notice of supplemental repayment agreement
- 42 CFR 60.33(e), Executed note to borrower
- 42 CFR 60.34(b)(1), Establishment of repayment terms—lender

OMB Approval No. 0915–0204, Physician's Certification of Permanent and Total Disability

Reporting
- 42 CFR 60.39(b)(2), Holder request to Secretary to determine borrower disability

The estimate of burden for the regulatory requirements of this clearance are as follows:

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
REPORTING			
Subpart D: Lender—32 Participating Lenders			
60.32(b) Application for Loan	[1]0	0.00	0
60.40(c)(1)(iv) Bankruptcy Report to the Secretary	140	12 min.	28
60.42(d) Audit	32	240 min. (4 hrs.)	128
60.42(e) Evidence of Fraud	3	120 min. (2 hrs.)	6
60.43(b) Evidence of Cause for Administrative Hearing	2	180 min. (3 hrs.)	6
Subtotal	177		168
Subpart E: School—190 Participating Schools			
60.56(c) Biennial Audit	190	240 min. (4 hrs.)	760
60.60(b) Evidence of Cause for Administrative Hearing	3	180 min. (3 hrs.)	9
60.61(b) Evidence of Fraud	0.00	0.00	0.00
60.61(d) Bankruptcy Documentation	140	10 min.	23
Subtotal	333		792
Total Reporting			960
NOTIFICATION			
Subpart B: Borrower—20,640 Borrowers			
60.0(a)(5) Sale or Transfer of Loan		Burden included in 60.38a	
60.8(b)(3) Status change	20,500	10 min.	3,417
60.61(d)* Bankruptcy	140	10 min.	23
Subtotal	20,640		3,440

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN—Continued

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
Subpart C: Loan/Lender—32 Participating Lenders			
60.18 Loan Consolidation	5,000	40 min.	3,333
60.21(b)(2) Refund Check Transfer	1,000	30 min.	500
60.21(b)(2) Refund Check Notification	1,000	15 min.	250
Subpart D: Lender—32 Participating Lenders			
60.33(g) Denial of Loan	133	14 min.	31
60.33(h) Borrower Indebtedness	15,227	1 min.	254
60.34(c) Biannual Debt Status	250,000	10 min.	41,667
60.35(a)(1) Delinquent Payment Notice to Borrower	9,500	30 min.	4,750
60.35(c)(2) Delinquent Notice to Credit Reporting Agency	1,300	15 min.	325
60.35(e) Demand Letter	1,300	10 min.	217
60.37(a) Right to Forbearance	2,400	5 min.	200
60.37(c)(3) Reminder of obligation to pay	1,200	10 min.	200
60.38(a) Notification to Borrower of Loan Reassignment	7,500	5 min.	625
60.40(c)(1)(iv) and (c)(4) Default Notification to Courts	140	25 min.	58
Subtotal	295,700		51,915
Subpart E: School—190 Participating Schools			
60.53 Change in Student Status	Burden included with 60.61(a)(7)		
60.54 Notice of Refund Payment	190	25 min.	79
60.57 Borrower Identifying Information	1,240	8 min.	165
60.61(a)(1) Entrance Interview	6,818	35 min.	3,977
60.61(a)(2) Exit Interview	6,818	50 min.	5,682
60.61(a)(2) Student Departure Notification to Lender	190	35 min.	111
60.61(a)(3) Unresolved Discrepancies to Lender	204	12 min.	41
60.61(a)(7) Change in Student Address to Lender	10,227	10 min.	1,705
Subtotal	25,687		11,760
Total Notification			67,115
RECORDKEEPING			
Subpart B: Borrower			
60.7(a)(2) Student Signed Stmt.-Gov. Debt Collection Procedures	Burden included in 60.34(b)(2) and 60.61(a)(1)&(2)		
60.7(c)(2) Non-Student signed Stmt.-Gov. Debt Collection	0.00		0.00
Subpart D: Lender—32 Participating Lenders			
60.31(c) Procedures for Servicing & Collecting Loans	32	240 min. (4 hrs.)	128
60.33(e) Promissory Note	Burden included in 60.42(a)(2)		
60.34(b)(2) Terms of Repayment Schedules	15,227	5 min.	1,269
60.35(a)(1) Attempts to Collect Delinquent Payment	10,000	5 min.	833
60.35(a)(2) Documentation of Skip-tracing	2,500	10 min.	417
60.37(a)(1) Documentation of Borrower's Inability to Pay	2,500	15 min.	625
60.37(c) Renewals of Forbearance	1,200	10 min.	200
60.37(c)(1) Basis for Belief of Borrower Itent to Default	300	10 min.	50
60.40(a) Documentation of Insurance Claims	978	70 min.	1,141
60.42(a)(1) Loan Records	Burden included in 60.42(a)(2)		
60.42(a)(2) Borrower's Payment History	133,500	15 min.	33,375
Subtotal	166,237		38,038
Subpart E: School—190 Participating Schools			
60.51(f)(1) Documentation of Needs Analysis Adjustment	Burden included in 60.61(a)(5)		
60.51(f)(2) Documentation of Standard Student Budget Adjustments	Burden included in 60.61(a)(5)		
60.56(a) Required Retention of HEAL Borrower Records	Burden included in 60.61(a)(5)		
60.56(b) Five year Retention of Student Records	Burden included in 60.61(a)(5)		
60.57 Retention of Reports to the Secretary	190	45 min.	143
60.61(a)(1) Entrance Interview	6,8185 min.	568.	
60.61(a)(2) Exit Interview	6,818	5 min.	568
60.61(a)(4) HEAL Check Receipt	190	300 min. (5 hrs.)	950
60.61((a)(5) Complete Records of HEAL Borrowers	133,500	15 min.	33,375
60.61(a)(6) Criteria for Student Budgets	10,227	2 min.	341
Subtotal	154,743		35,945
Total Recordkeeping			73,983

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN—Continued

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
Total Annual Burden			142,058

[1] No new HEAL loans.
[2] Burden is from Subpart E—School.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 3, 1997.

James J. Corrigan,

Acting Associate Administrator for Management and Program Support.

[FR Doc. 97–15278 Filed 6–10–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Detecting Cervical Cancer

T Ried et al. (NHGRI)
U.S. Patent Serial No. 08/781,424 filed 10 Jan 97
Licensing Contact: Mary Savagner, 301/496–7735 ext. 205

Last year, nearly 16,000 women in the United States were diagnosed with invasive cervical carcinoma and nearly 5,000 women died from the disease. While the widespread promotion and use of the Pap smear has contributed to the reduced mortality rate associated with the disease over the last 30 years, there is still a need for improvement and optimization of the screening process. Despite tremendous efforts, the automated analysis of cervical PAP smears based on cytopathological stains has not been achieved. Also, cytopathological analyses reveal insufficient information to predict disease progression.

This invention provides a method of detecting the presence of invasive cervical carcinoma by detecting in a cervical cell taken from a patient the presence of a chromosomal aberration indicating the presence of invasive cervical carcinoma. The invention also provides a method of diagnosing advanced-stage cervical carcinoma in a patient as well as a method of classifying the progression of dysplastic cervical cells from non-invasive to invasive cervical carcinoma. In addition, the invention provides kits comprising nucleic acids that specifically hybridize in chromosome 3q and specifically hybridize to another chromosome, and to compositions comprising nucleic acids. (portfolio: Cancer—Diagnostics, in vitro, other)

Chimeric Nucleic Acid Sequences Encoding attenuated Hepatitis A Viruses and the Use of These Sequences and Viruses as Vaccines

SU Emerson, SA Harmon, E Ehrenfeld, DF Summers (NIAID)
Serial No. 08/547,482 filed 24 Oct 95
Licensing Contact: Gloria Richmond, 301/496–7056 ext. 268

This invention is directed to chimeric hepatitis A viruses, containing mutations in the 2A gene, which will be used as the basis for an attenuated vaccine for humans. The mutations in the 2A gene are unusual because they are not naturally occurring mutations but were engineered into an infectious cDNA clone. These mutations in 2A are able to decrease pathology substantially and offer the opportunity of constructing a virus that will induce effective immunity without causing disease. Sales of the inactivated vaccine in Europe have demonstrated the commercial importance of a vaccine for hepatitis A. An attenuated vaccine would be more economical and easier to administer. (portfolio: Infectious Diseases—Vaccines, viral, non-AIDS)

Vaccine for Dengue Virus

C–J Lai, M Bray, AG Pletnev, R Men, Y–M Zhang, KH Eckels (NIAID)
Serial No. 08/250,802 filed 27 May 94
Licensing Contact: Gloria H. Richmond, 301/496–7056 ext 268

The claimed invention relates to recombinant modified or viable chimeric dengue viruses for use as vaccines against dengue and other flavivirus disease, including tick-borne encephalitis. Dengue is a mosquito-transmitted viral disease which occurs in tropical and subtropical regions throughout the world. Inactivated whole dengue virus vaccines have been shown to be insufficiently immunogenic and live dengue virus vaccines prepared by serial passage in cell culture have not been shown to be consistently attenuated. A dengue vaccine is still not available. The present invention represents a technical breakthrough, which provides new approaches to dengue vaccines by construction of chimeric dengue viruses of all four serotypes and strategic modification to produce attentuated virus strains. Several fields of use remain available for licensing. (portfolio: Infectious Diseases—Vaccines, viral, non-AIDS)

Parvovirus B19 Receptor and Parvovirus B19 Detection

N Young, K Brown (NHLBI)
Serial No. 08/034,132 filed 22 Mar 93; U.S. Patent 5,449,608 issued 12 Sep 95
Licensing Contact: Gloria H. Richmond, 301/496–7056 ext 268

The claimed invention provides a method of detecting the presence of a parvovirus in a sample. Parvoviruses infect animals and man. In man, the only known pathogenic member of this family is parvovirus B19. The inventors have identified the parvovirus B19 receptor which provides for a method to diagnose, prevent, and treat parvovirus infection utilizing the binding affinity for the receptor. (portfolio: Infectious

Diseases—diagnostics, viral, non-AIDS; Infectious Diseases—Therapeutics, anti-viral, non-AIDS)

Dated: May 30, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–15299 Filed 6–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Chemistry and Related Sciences.
Date: June 24, 1997.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 5150, Telephone Conference.
Contact Person: Dr. Zakir Bengali, Scientific Review Administrator, 6701 Rockledge Drive, Room 5150, Bethesda, Maryland 20892, (301) 435–1742.

Name of SEP: Behavioral and Neurosciences.
Date: July 2, 1997.
Time: 8:30 a.m.
Place: Capitol Holiday Inn, Washington, DC.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

Name of SEP: Biological and Physiological Sciences.
Date: July 7, 1997.
Time: 11:30 a.m.
Place: NIH, Rockledge 2, Room 4132, Telephone Conference.
Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Biological and Physiological Sciences.
Date: July 7, 1997.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4132, Telephone Conference.
Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Biological and Physiological Sciences.
Date: July 11, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

Name of SEP: Behavioral and Neurosciences.
Date: July 16, 1997.
Time: 8:30 a.m.
Place: Ramada Inn, Rockville, MD.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Chemistry and Related Sciences.
Date: July 17, 1997.
Time: 8:30 a.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. John Bowers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4168, Bethesda, Maryland 20892, (301) 435–1725.

Name of SEP: Biological and Physiological Sciences.
Date: July 17, 1997.
Time: 2:45 p.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Martin Padarathsingh, Scientific Review Administrator, 6701 Rockledge Drive, Room 4146, Bethesda, Maryland 20892, (301) 435–1717.

Name of SEP: Biological and Physiological Sciences.
Date: July 17–18. 1997.
Time: 8:20 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, Maryland 20892, (301) 435–1259.

Name of SEP: Biological and Physiological Sciences.
Date: July 25, 1997.
Time: 1:00 p.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

Name of SEP: Chemistry and Related Sciences.
Date: July 30–31, 1997.
Time: 8:30 p.m.
Place: Hyatt Regency, Bethesda, MD.
Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892, (301) 435–1180.

Name of SEP: Behavioral and Neurosciences.
Date: August 6, 1997.
Time: 8:30 a.m.
Place: Hyatt Regency Hotel, Bethesda, MD.
Contact Person: Dr. Carl Banner, Scientific Review Administrator, 6701 Rockledge Drive, Room 5182, Bethesda, Maryland 20892, (301) 435–1251.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Biological and Physiological Sciences.
Date: June 27, 1997.
Time: 2:00 p.m.
Place: Latham Hotel, Washington, DC.
Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 6701 Rockledge Drive, Room 6172, Bethesda, Maryland 20892, (301) 435–1045.

Name of SEP: Biological and Physiological Sciences.
Date: July 14–15, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Biological and Physiological Sciences.
Date: July 16, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Silver Spring, MD.
Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, Maryland 20892, (301) 435–1259.

Name of SEP: Biological and Physiological Sciences.
Date: July 25, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Date: June 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–15296 Filed 6–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Record Linkage Studies Utilizing Resources in Population-Based Tumor Registries.
Date: June 10, 1997.

Time: 10:00 a.m.

Place: Teleconference, Executive Plaza North, Room 640, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Courtney M. Kerwin, PH.D., M.P.H., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 640, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, Telephone: 301/496–7421.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control.)

Dated: June 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–15297 Filed 6–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Phenolphthalein

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of phenolphthalein which is used as a laboratory reagent and acid-base indicator and in over-the-counter laxative preparations. The results of these studies were previously released in draft form prior to a public peer review in December, 1995.

Toxicology and carcinogenicity studies were conducted by administrating phenolphthalein to groups of 50 F344/N rats for 2 years and to $B6C3F_1$ mice at exposures of 0, 3000, 6000 or 12,000 ppm in the feed for 2 years (equivalent to average daily doses of approximately 300, 600 or 1200 mg phenolphthalein/kg body weight to males and 400, 800 or 1000 mg/kg to females).

Under the conditions of these 2-year feed studies, there was clear evidence of carcinogenic activity [1] of phenolphthalein in male F344/N rats based on markedly increased incidences of benign pheochromocytomas of the adrenal medulla and of renal tubule adenomas and adenomas or carcinomas (combined). There was some evidence of carcinogenic activity of phenolphthalein in female F344/N rats based on the increased incidences of benign pheochromocytomas of the adrenal medulla in the 12,000 ppm group and of benign or malignant pheochromocytomas (combined) in the 12,000 and 25,000 ppm groups. There was clear evidence of carinogenic activity of phenolphthalein in male $B6C3F_1$ mice based on increased incidences of histiocytic sarcomas and of malignant lymphomas of thymic origin. there was clear evidence of carcinogenic activity of phenolphthalein in female $B6C3F_1$ mice based on increased incidences of histiocytic sarcomas, malignant lymphomas of all types, lymphomas of thymic origin, and benign sex-cord stromal tumors of the ovary.

Exposure of rats to phenophthalein in feed for 2 years resulted in increased incidences of focal hyperplasia of the adrenal medulla in males and in increased incidences and/or severity of nephropathy of the kidney in males and females. Exposure of mice to phenolphthalein in feed for 2 years resulted in increased incidences of atypical hyperplasia of the thymus in males and females, degeneration of the germinal epithelium of the testis in males, and ovarian hyperplasia in females.

Exposure of mice to phenolphthalein in feed for 2 years resulted in decreased incidences of hepatocellular neoplasms and nonneoplastic lesions in males and females.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709–2233.

Copies of *Toxicology and Carcinogenesis Studies of Phenolphthalein (CAS No. 77–09–8)* (TR–465) are available from Central Data Management, NIEHS, MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709–2233; telephone (919) 541–3419.

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results (''clear evidence'' and ''some evidence''), one category for uncertain findings (''equivocal evidence''), one category for no observable effect (''no evidence''), and one category for studies that cannot be evaluated because of major flaws (''inadequate study'').

Dated: May 28, 1997.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 97–15298 Filed 6–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4152–N–02]

Announcement of Funding Award FY 1996; Cooperative Agreement Between the Department of Housing and Urban Development (HUD) and the Milton S. Eisenhower Foundation (MEF)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Announcement of additional funding award.

SUMMARY: According to section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of an additional funding award for Fiscal Year (FY) 1996 Technical Assistance to the Milton S. Eisenhower Foundation. The purpose of this document is to announce the name and address of the existing grantee and the amount of the additional award.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Main, Office of Crime Prevention and Security, Office Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4112, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197, ext 4232. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Authority

This cooperative agreement is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

II. FY 1996 Funding for Original Award

On April 26, 1996, the President signed the Omnibus Consolidated

Rescissions and Appropriations Act of 1996 (Pub. L. 104–134) (FY 1996 Appropriations Act). The amount available, to remain available until expended. The FY 1996 Appropriations Act appropriated $290 million for the Drug Elimination Program. Of the total $290 million appropriated; $10 million will fund drug elimination technical assistance, contracts and other assistance training, program assessments, and execution for or on behalf of public housing agencies and resident organizations (including the cost of necessary travel for participants in such training).

III. Funding and Recipient Information

Original award (FY 1996 appropriation 86X0197-DSP): $1,400,000.

New award (FY 1996 appropriation 86X0197–DSP): $87,322.

Total award amount: $1,487,322.

Recipient: Milton S. Eisenhower Foundation, Suite 200, 1660 L. Street, NW, Washington, DC 20036.

Recipient contact person: Lynn A. Curtis, President and CEO.

Recipients phone number: (202) 429–0440, fax (202) 452–0169.

HUD cooperative agreement number: DC00TTC0000096.

IV. General Objectives

On September 12, 1996, the United States Department of Housing and Urban Development and the Milton S. Eisenhower Foundation entered into a cooperative agreement to provide technical assistance to housing authorities to implement and evaluate law enforcement mini-stations and inner-city youth safe havens in the following public housing authorities: District of Columbia, Columbia, SC, Little Rock, AR, Memphis, TN, San Juan, Puerto Rico, and Baltimore, MD. In addition, the Foundation and HUD will identify best practices among drug-prevention efforts which operate through community-based facilities, as methods public housing authorities can use in support of residents, who must transition from welfare to work.

The KOBAN police and community partnership program is a unique innovative program to improve relationships between local law enforcement agencies and the inner-city neighborhoods they patrol, to reduce crime and drug abuse in the neighborhoods and prevent inner-city youth from engaging in high-risk behavior. The program builds on policing strategies that have operated successfully in Japan and proven successful in other variations in American cities.

V. Specific Change to Agreement

The amendment to the agreement requires the Eisenhower Foundation to design, develop and deliver a best practices guidebook to HUD. The guidebook will identify best practices among drug-prevention efforts which operate through community-based facilities, such as methods public housing authorities can use in support of residents, who must transition from welfare to work. This task will parallel and complement the existing scope of work.

The Catalog of Federal Domestic Assistance number for the Drug Elimination Program is 14.854.

Dated: June 6, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–15287 Filed 6–10–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4208–C–03]

Public and Indian Housing Drug Elimination Technical Assistance Program Notice of Funding Availability—FY 1997; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA); correction.

SUMMARY: On May 23, 1997 (62 FR 28576), HUD published a notice announcing the availability of $2.8 million under the Fiscal Year 1997 Public and Indian Housing Drug Elimination Technical Assistance Program.

The funds reimburse consultants who provide expert advice and work with housing authorities or resident councils to assist them in gaining skills and training to eliminate drug abuse and related problems from public housing communities. In the body of the May 23, 1997 Notice of Funding Availability (NOFA) is information concerning the following: (1) The purpose of the NOFA; (2) eligible applicants and activities; (3) available funding amounts; (4) selection criteria; (5) application processing; (6) consultant eligibility; and (7) consultant application processing.

The May 23, 1997 NOFA incorrectly provided for an application deadline date of June 30, 1997. The application due date should have been July 15, 1997. The purpose of this document is to correct the application due date in the May 23, 1997 NOFA.

FOR FURTHER INFORMATION CONTACT: For questions regarding the Public Housing Drug Elimination program contact Bertha M. Jones, Office of Crime Prevention and Security (OCPS), Office of Community Relations and Involvement (OCRI), Department of Housing and Urban Development, Room 4112, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1197.

For questions regarding the Native American program contact Tracy Outlaw, National Office of Native American Programs (ONAP), Department of Housing and Urban Development, Suite 3990, 1999 Broadway, Denver, CO 80202; telephone (303) 675–1600.

Hearing and speech-impaired persons may access the telephone numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the ''800'' number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 97–13519, Public and Indian Housing Drug Elimination Technical Assistance Program Notice of Funding Availability—FY 1997, published in the **Federal Register** on May 23, 1997 (62 FR 28576) is corrected as follows:

1. On page 28576, in column 1, the ''DEADLINE DATES'' section is corrected to read as follows:

DEADLINE DATES: This NOFA is effective upon publication. Technical assistance applications and consultant application kits may be immediately submitted to the address specified in the application kit. Applications may be submitted anytime, up to close of business on July 15, 1997. Technical assistance applications will be reviewed on a continuing basis until July 15, 1997, or until funds available under this NOFA are expended. There is no application deadline for consultants.

2. On page 28581, in columns 1 and 2, paragraph (b) of Section II. Application Process, is corrected to read as follows:

II. Application Process

* * * * *

(b) Application Submission. This NOFA is effective upon publication. Short-term (90 days for completion) technical assistance applications and consultant application kits may be immediately submitted to the address specified in the application kit. The application submission deadline for the short-term technical assistance grants available under this NOFA is July 15,

1997. Technical assistance applications will be reviewed on a continuing first-come, first-served basis, until funds under this NOFA are no longer available or until July 15, 1997. Applicants are encouraged to submit their applications as early as possible in the fiscal year.

* * * * *

Dated: June 6, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary, Public and Indian Housing.

[FR Doc. 97–15302 Filed 6–10–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: July 16, 1997, at 9:00 a.m.

ADDRESSES: Fourth floor conference room, 645 ''G'' Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include a review of current restoration activities, recommendations on projects for the fiscal year 1998 restoration work plan, and discussion of the restoration reserve fund.

Dated: June 4, 1997.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 97–15172 Filed 6–10–97; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–07–1]

Salt Lake District, Box Elder Resource Management Plan; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management, Salt Lake District, has completed an Environmental Analysis/Finding of No Significant Impact of the Proposed Plan Amendment to the Box Elder Resource Management Plan (RMP). The Proposed Amendment, implementation of alternative #2, addresses management of 47,088 acres of land acquired since the RMP was completed in 1986, provides management goals and objectives for future acquisitions, and changes management on 16,621 acres of selected lands which were previously analyzed in the RMP.

DATES: The protest period for this Proposed Plan Amendment will commence with the date of publication of this notice and last for 30 days. Protests must be received on or before July 11, 1997.

ADDRESSES: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street NW., Washington, DC 20240, within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Alice Stephenson, Environmental Specialist/Planner, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah, 84119, (801) 977–4317. Copies of the Environmental Assessment and Proposed Plan Amendment are available for review at the Salt Lake District Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The Proposed Amendment is subject to protest from any party who has participated in the planning process. Protests must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest.

—A statement of the issue(s) being protested.

—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps etc., of the Proposed Plan Amendment.

—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.

—A concise statement as to why the protester believes the BLM State Director is incorrect.

Dated: June 5, 1997.

G. William Lamb,

State Director, Utah.

[FR Doc. 97–15232 Filed 6–10–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–97–2200]

Notice of Intent To Prepare An Environmental Impact Statement For A Proposed Land Exchange Near Kingman, Arizona, and Notice of Scoping Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent, notice of scoping period, and notice of scoping meetings.

SUMMARY: The Bureau of Land Management is considering a proposal to exchange land pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. An environmental impact statement will be prepared in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 to analyze the impacts associated with the proposed exchange. The exchange proponent is Santa Fe Railroad Company being represented by Ben Brooks and Associates. It is proposed to exchange approximately 70,000 acres of public land for approximately 70,000 acres of private land. The final acreage may change as the exchange will be on an equal value basis. There are 70,000 acres of offered lands (lands currently in private ownership) and 60,000 acres of selected lands (lands currently in public ownership) 20 to 40 miles southwest of Kingman, Arizona. The remaining 10,000 acres of selected lands are located approximately 15 miles northeast of Kingman, Arizona. The exchange includes portions of Dutch Flat and the Hualapai and McCracken mountains. The BLM would acquire lands mostly within the Hualapai and McCracken mountains or foothills while

Santa Fe would acquire land in the Dutch Flat and Hualapai Valley areas.

This notice is intended to invite the public to participate in identification of issues and development of alternatives for the proposal.

DATES: Public scoping meetings to identify public concerns will be held on the following dates:

Monday, June 30, in Wikieup, Arizona, at the Owens School, 14109 East Chicken Springs Road, Wikieup, Arizona 85360.

Tuesday, July 1, in Kingman, Arizona, at the BLM office located at 2475 Beverly Avenue, Kingman, Arizona 86401.

Wednesday, July 2, in Yucca, Arizona, at the Brooks Realty Office, 12470 South Yucca Frontage Road, Yucca, Arizona 86348.

Comments relating to the identification of issues and alternatives will be accepted for up to 45 days following the publication of this notice.

ADDRESSES: Send comments to: Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

FOR FURTHER INFORMATION CONTACT: Don McClure, Project Manager, (520) 757–3161.

SUPPLEMENTARY INFORMATION: The proposed exchange area is located in northwestern Arizona. The land exchange will block federal ownership to facilitate management of natural resources in the Hualapai and McCracken mountains and associated foothills. This exchange will help alleviate problems associated with private land sales and development in the checker boarded lands in Dutch Flat and the Hualapai and McCracken mountains. Consolidation of lands into public ownership in the Hualapai Mountains area was begun in the early 1980s. To date, BLM has exchanged lands with the State of Arizona and private entities to consolidate public ownership throughout the Hualapai Mountains. This proposed exchange will consolidate the last large checker boarded area within the Hualapai Mountains into public ownership.

Anticipated Issues

Management concerns that will be addressed include, but are not limited to, wildlife management, impacts on visual quality, unique vegetation, Native American religious concerns, and access concerns. Baseline studies will be conducted to gather information about cultural resources, hazardous materials, minerals, water rights, and the general habitat.

Other Relevant Information

The EIS will be prepared by an interdisciplinary team of resource specialists. The team will include a project manager, a wildlife specialist, a realty specialist, a botanist, a soil scientist, a range management specialist, a visual resources specialist, a biological resources specialist, and a cultural resource specialist.

Complete records of all phases of the EIS process will be available for public review at the Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

Denise P. Meridith,

State Director, Arizona.

[FR Doc. 97–15231 Filed 6–10–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Washington State in the Possession of the Department of Anthropology, Central Washington University, Ellensburg, WA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from Washington State in the possession of the Department of Anthropology, Central Washington University, Ellensburg, WA.

A detailed assessment of the human remains was made by Department of Anthropology professional staff in consultation with representatives of the Puyallup Indian Tribe of Indians and the Muckleshoot Indian Tribe.

In 1896, human remains representing one individual were removed from ''under a fir tree'' by M. Choir near Lake Washington, Seattle, King County, WA, and donated to the Burke Museum. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

In 1913 or 1914, human remains representing one individual was recovered by Mr. Williams during a re-grade of Jackson Street in Seattle, King County, WA, and donated to the Burke Museum. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

In 1921, human remains representing a minimum of two individuals were removed from Othello Street on Lake Washington in Seattle, King County, WA during city street construction. These human remains were donated to the Burke Museum that same year by the Seattle Coroner's Office. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

Around 1925, human remains representing one individual were donated to the Burke Museum by Prof. Trevor Kincaid. Accession information indicates these human remains were recovered from an unknown location in the vicinity of Seattle, WA. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

In 1943, human remains representing one individual were removed by Mr. Harold Hammer during a house construction in Seattle, King County, WA, and donated to the Burke Museum by the Seattle Coroner's Office. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing one individual were removed from an unknown location in the vicinity of Seattle and donated to the Burke Museum by Rev. Lester Pontius. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

In 1959, human remains representing a minimum of two individuals were removed from the Dash Point site (45–PI–41), Pierce County, WA, by Mr. M.V. Petersen, Butler, and Garner and donated to the Burke Museum. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

In 1966, human remains representing one individual were recovered from the Beachcrest Addition, Thurston County, WA by the Thurston County Sheriff's Office and donated to the Burke

Museum. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

Morphological evidence indicates these individuals are Native American based on dental patterns and cranial formation. Anthropological evidence, including continuities of technology and material culture, indicates continuous occupation by Salishan peoples over the last 2,000 years in the Puget Sound region of Washington State which includes the sites and vicinities listed above. Consultation evidence, including oral history, presented by representatives of the Puyallup Indian Tribe of Indians and the Muckleshoot Indian Tribe further support this evidence of occupation.

Based on the above mentioned information, officials of the Department of Anthropology, Central Washington University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of ten individuals of Native American ancestry. Officials of the Department of Anthropology, Central Washington University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and Puyallup Indian Tribe of Indians and the Muckleshoot Indian Tribe.

This notice has been sent to officials of the Puyallup Indian Tribe of Indians and the Muckleshoot Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Steven Hackenberger, Chair, Department of Anthropology, Central Washington University, 400 E. 8th Ave., Ellensburg, WA 98926–7544; telephone: (509) 963–3201, fax (509) 963–3215, before July 11, 1997. Repatriation of the human remains to the Puyallup Tribe of Indians may begin after that date if no additional claimants come forward.

Dated: June 3, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–15224 Filed; 6–10–97 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Prince William Sound, AK in the Possession of the Department of Anthropology, Central Washington University, Ellensburg, WA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from Prince William Sound, AK, in the possession of the Department of Anthropology, Central Washington University, Ellensburg, WA.

A detailed assessment of the human remains was made by Department of Anthropology professional staff in consultation with representatives of the Chugach Alaska Corporation.

In 1902, human remains were recovered from Billy's Hole cave on an island in Prince William Sound, AK, by Edmond S. Meany. During the 1970s, human remains representing a minimum of two individuals from this site were transferred to the Department of Anthropology at Central Washington University. No known individuals were identified. No associated funerary objects are present.

Archeological and ethnographic evidence from the islands of Prince William Sound, including manner of internment, continuity of technology, and cultural items indicate continuous occupation by the same communities from the precontact period to the present. Oral tradition presented by the representatives of the Chugach Alaska Corporation also supports Chugach occupation of this area throughout this period.

Based on the above mentioned information, officials of the Department of Anthropology, Central Washington University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the Department of Anthropology, Central Washington University have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Chugach Alaska Corporation.

This notice has been sent to officials of the Chugach Alaska Corporation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Steven Hackenberger, Chair, Department of Anthropology, Central Washington University, 400 E. 8th Ave., Ellensburg, WA 98926–7544; telephone: (509) 963–3201, fax (509) 963–3215 , before July 11, 1997. Repatriation of the human remains to the Chugach Alaska Corporation may begin after that date if no additional claimants come forward.

Dated: June 3, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–15228 Filed; 6–10–97 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains, Associated Funerary Objects, and an Unassociated Funerary Object from Hartstine Island, Mason County, WA in the Possession of the Burke Museum, University of Washington, Seattle, WA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains, associated funerary objects, and an unassociated funerary object from Hartstine Island, Mason County, WA, in the possession of the Burke Museum, University of Washington, Seattle, WA.

A detailed assessment of the human remains was made by Burke Museum professional staff in consultation with representatives of the Squaxin Island Tribe.

In 1923, human remains representing two individuals were removed from graves on Hartstine Island, Mason County, WA by Mr. A.G. Colley and donated to the Burke Museum. No known individuals were identified. The six associated funerary objects include five wood fragments and one copper-stained stone.

Also in 1923, cultural items consisting of a whalebone club and soil from a grave on Hartstine were removed by Mr. A.G. Colley and donated to the Burke Museum. No human remains from this grave are present.

Hartstine Island has been identified as having been occupied by the Squaxin Island Tribe from pre-contact times into the historic period based on historical documents, ethnographic and anthropological evidence, and continuity of material culture. Oral history presented by representatives of the Squaxin Island Tribe further supports this conclusion.

Based on the above mentioned information, officials of the Burke Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Burke Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the six objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Burke Museum have further determined that, pursuant to 25 U.S.C. 3001 (3)(B), these two cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Lastly, officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains, associated funerary objects, and unassociated funerary objects and the Squaxin Island Tribe.

This notice has been sent to officials of the Squaxin Island Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. James Nason, Chair of the Repatriation Committee, Burke Museum, Box 353010, University of Washington, Seattle, WA 98195; telephone: (206) 543–9680, before July 11, 1997. Repatriation of the human remains, associated funerary objects, and unassociated funerary objects to the Squaxin Island Tribe may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: June 2, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–15225 Filed; 6–10–97 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Milwaukee Public Museum, Milwaukee, WI, which meet the definition of ''sacred objects'' under Section 2 of the Act.

The cultural items include a bear-cubskin medicine bag, two pinesnake skins, and two birchbark cases for the snake skins.

In 1910, Dr. Samuel A. Barrett, Curator of Anthropology at the Milwaukee Public Museum purchased these cultural items as a set from Spekapuwikweu (also known as Ashkapokok Annamitta Neconish), daughter of Animita (also known as Frank Annamitta) on the Menominee Reservation, Keshena, WI. Museum catalogue information states these items were said to be associated with the Menominee Medicine Lodge/Mitawin, although other documentation by Dr. Barrett indicates they were exclusively used for ''sorcery.''

Authorized representatives of the Menominee Indian Tribe of Wisconsin acting on behalf of Mr. Richard Annamitta, Sr. have identified these five cultural items as specific ceremonial objects needed by Mr. Richard Annamitta, Sr. for the practice of on-going and traditional ceremonial and religious traditions, specifically the Mitawin or Grand Medicine Lodge. Information provided by Mr. Richard Annamitta, Sr. and other authorized Menominee tribal representatives indicates these items are rightfully inherited only by male descendants of the owner, and further that such items could not have been rightfully alienated by any other person. This claim is also supported by the Menominee Indian Tribe of Wisconsin and members of Mr. Annamitta's extended family. Further, Mr. Richard Annamitta, Sr. has presented proof of direct lineal descent from the last rightful owner, Animita/Frank Annamitta, as his grandson and is the current rightful inheritor of these cultural items.

Based on the above-mentioned information, officials of the Milwaukee Public Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(C), these five cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Milwaukee Public Museum have also determined that, pursuant to 25 U.S.C. 3005 (a)(5)(A), Mr. Richard Annamitta, Sr. is the direct lineal descendant of the individual who owned these sacred objects.

This notice has been sent to Mr. Richard Annamitta, Sr. and officials of the Menominee Indian Tribe of Wisconsin. Any other lineal descendent who believes him or herself to be culturally affiliated with these objects should contact Ann McMullen, Ph.D., Curator of North American Ethnology, Milwaukee Public Museum, 800 West Wells St., Milwaukee, WI 53233; telephone: (414) 278–2786, fax (414) 278–6100 before July 11, 1997. Repatriation of these objects to Mr. Richard Annamitta, Sr. may begin after that date if no additional claimants come forward.

Dated: June 3, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc.97–15227 Filed; 6–10–97 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Washington State in the Possession of the Department of Anthropology, Central Washington University, Ellensburg, WA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the

completion of an inventory of human remains from Washington State in the possession of the Department of Anthropology, Central Washington University, Ellensburg, WA.

A detailed assessment of the human remains was made by Department of Anthropology professional staff in consultation with representatives of the Puyallup Indian Tribe of Indians and the Muckleshoot Indian Tribe.

In 1896, human remains representing one individual were removed from ''under a fir tree'' by M. Choir near Lake Washington, Seattle, King County, WA, and donated to the Burke Museum. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

In 1913 or 1914, human remains representing one individual was recovered by Mr. Williams during a re-grade of Jackson Street in Seattle, King County, WA, and donated to the Burke Museum. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

In 1921, human remains representing a minimum of two individuals were removed from Othello Street on Lake Washington in Seattle, King County, WA during city street construction. These human remains were donated to the Burke Museum that same year by the Seattle Coroner's Office. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

Around 1925, human remains representing one individual were donated to the Burke Museum by Prof. Trevor Kincaid. Accession information indicates these human remains were recovered from an unknown location in the vicinity of Seattle, WA. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

In 1943, human remains representing one individual were removed by Mr. Harold Hammer during a house construction in Seattle, King County, WA, and donated to the Burke Museum by the Seattle Coroner's Office. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing one individual were removed from an unknown location in the vicinity of Seattle and donated to the Burke Museum by Rev. Lester Pontius. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

In 1959, human remains representing a minimum of two individuals were removed from the Dash Point site (45–PI–41), Pierce County, WA, by Mr. M.V. Petersen, Butler, and Garner and donated to the Burke Museum. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

In 1966, human remains representing one individual were recovered from the Beachcrest Addition, Thurston County, WA by the Thurston County Sheriff's Office and donated to the Burke Museum. In the 1970s, these human remains were brought to the Department of Anthropology, Central Washington University. No known individuals were identified. No associated funerary objects are present.

Morphological evidence indicates these individuals are Native American based on dental patterns and cranial formation. Anthropological evidence, including continuities of technology and material culture, indicates continuous occupation by Salishan peoples over the last 2,000 years in the Puget Sound region of Washington State which includes the sites and vicinities listed above. Consultation evidence, including oral history, presented by representatives of the Puyallup Indian Tribe of Indians and the Muckleshoot Indian Tribe further support this evidence of occupation.

Based on the above mentioned information, officials of the Department of Anthropology, Central Washington University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of ten individuals of Native American ancestry. Officials of the Department of Anthropology, Central Washington University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and Puyallup Indian Tribe of Indians and the Muckleshoot Indian Tribe.

This notice has been sent to officials of the Puyallup Indian Tribe of Indians and the Muckleshoot Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Steven Hackenberger, Chair, Department of Anthropology, Central Washington University, 400 E. 8th Ave., Ellensburg, WA 98926–7544; telephone: (509) 963–3201, fax (509) 963–3215, before July 11, 1997. Repatriation of the human remains to the Puyallup Tribe of Indians may begin after that date if no additional claimants come forward.

Dated: June 3, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–15226 Filed 6–10–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Notice is hereby given that on April 11, 1997, a proposed Consent Decree in *United States* v. *Gold Field Mining Corp.*, Civil Action No. 96–2146–JWL (D. Kan.) was lodged with the United States District Court for the District of Kansas. The proposed Consent Decree resolves the United States' claims in this action against Gold Fields Mining Corporation (''Gold Fields'') and Viacom International Incorporated (''Viacom'') regarding their liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for response costs incurred and to be incurred by the United States in connection with the Cherokee County Superfund Site—Galena Subsite in Cherokee County, Kansas (''Subsite'').

The proposed Consent Decree requires, *inter alia*, that Gold Fields and Viacom will pay to the EPA Hazardous Substance Superfund $2,100,000 and $492,000, respectively. The proposed Consent Decree grants to the defendants a covenant not to sue and the contribution protection afforded by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in the proposed Consent Decree. The proposed Consent Decree contains reopeners which allow the United States, in certain situations, to institute additional proceedings to require the defendants to perform response actions or reimburse the United States for additional costs of response.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Gold Field Mining Corp.*, DOJ No. 90–11–2–1081.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Kansas, 500 State Avenue, Suite 360, Kansas City, Kansas 66101; and at the Consent Decree library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. When requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–15230 Filed 6–10–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATA: 8:00 a.m., Tuesday, July 1, 1997.

PLACE: Sheraton City Centre, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

STATUS: Open.

MATTERS TO BE CONSIDERED: Update on the Corrections Program Office Violent Offender and Truth In Sentencing Grant Program, update on the NIC Executive Excellence Program, a history of NIC Work Plan/Feasibility Study, victims issues discussion points, a status report on the Mental Health Survey in Jails, an update on NIC's Strategic Planning, the NIC Program Plan for FY 1998, election of officers and liaisons, and a quarterly report from the Office of Justice Programs.

FOR FURTHER INFORMATION CONTACT:

Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 97–15295 Filed 6–10–97; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the Attestation by Employers Using Alien Crewmembers to Perform Longshore Work at Locations in the State of Alaska. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 11, 1997.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, *e.g.*, permitting electronic submissions of responses.

ADDRESSEE: Comments and questions regarding the collection of information on Form ETA 9033–A, Attestation by Employers Using Alien Crewmembers for Longshore Activities in the State of Alaska, should be directed to James Norris, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4456, Washington, D.C. 20210 ((202) 219–5263 (this is not a toll-free number)).

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required due to amendments to section 258 of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (NA). The amendments created an Alaska exception to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. Under the Alaska exception, before any employer may use alien crewmembers to perform longshore work in the State of Alaska, it must submit an attestation to ETA containing the elements prescribed by the INA.

The INA further requires that the Department make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation it has received.

II. Current Actions

In order for the Department to meet its statutory responsibilities under the INA there is a need for an extension of an existing collection of information pertaining to employers' seeking to use alien crewmembers to perform longshore activities at locations in the State of Alaska.

Type of Review: Extension of a currently approved collection without change.

Agency: Employment and Training Administration, Labor.

Title: Attestations by Employers Using Alien Crewmembers for Longshore Activities at Locations in the State of Alaska.

OMB Number: 2005–AB03.

Affected Public: Businesses or other for-profit.

Form: Form ETA 9033–A.

Total Respondents: 350.

Frequency of Response: Annually.

Total Responses: 350.

Average Burden Hours per Response: 3.

Estimate Total Annual Burden Hours: 1,050.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington D.C. this 5th day of June, 1997.

John R. Beverly, III,

Director, U.S. Employment Service.

[FR Doc. 97–15260 Filed 6–10–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revised collection of the Summer Youth Employment Program.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 11, 1997.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: James Wiggins, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 219–7533 ext. 164 (this is not a toll-free number); internet address—wigginsj@doleta.gov; fax number (202) 219–7190.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Job Training Partnership Act Program, title IIB, the Department of Labor has established the Summer Youth Employment and Training Program to: (1) Enhance the basic education skills of youth; (2) encourage school completion or enrollment in supplementary or alternative school programs; provide eligible youth with exposure to the world of work; and (3) enhance the citizenship skills of youth. The Department of Labor is responsible for overseeing these programs. In order to carry out that responsibility, the Department will be revising the reporting instructions and monitoring instruments.

II. Current Actions

The changes being proposed will be consistent with the current emergency request which has been forwarded to the Office of Management and Budget. The Department is requesting reporting at three points during the summer program—plan, mid and final. This information will permit the Department to fulfill requests from the U.S. Congress, the Administration, the media and the public.

Type or Review: Extension.

Agency: Employment and Training Administration, U.S. Department of Labor.

Title: Summer Youth Employment and Training Program.

OMB Number: 1205–XXXX.

Recordkeeping: Retention for three years.

Affected Public: States.

Cite/Reference/Form/etc: Summer Reporting (Plan/Mid/Final) and Regional Monitoring.

Total Respondents: 56.

Frequency: Plan, Mid-Summer and End of Summer.

Total Responses: 168.

Average Time per Response: Two hours per report each report.

Estimated Total Burden Hours: 6717.

Total Burden Cost (operating/maintaining): $750.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 5, 1997.

Charles L. Atkinson,

Deputy Administrator, Office of Job Training Programs.

[FR Doc. 97–15259 Filed 6–10–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Unemployment Insurance Customer Satisfaction Survey

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Unemployment Insurance Service of the Employment and Training Administration is soliciting comments concerning the proposed customer satisfaction survey of Unemployment Insurance claimants. A copy of the proposed satisfaction survey can be obtained by contacting the employee listed below in the contract section of this notice.

DATES: Written comments must be submitted on or before August 11, 1997. If you anticipate submitting written comments, but find it difficult to do so within the length of time allowed by

this notice, you should request an extension from the contact person listed below as soon as possible. An effort will be made to accommodate each request, unless otherwise justified.

FOR FURTHER INFORMATION CONTACT: Robert Pavosevich, U.S. Dept. of Labor, Unemployment Insurance Service, Room C–4514, 200 Constitution Ave. N.W., Washington, D.C. 20210, (202) 219–5312, (this is not a toll-free number), internet address: robp@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Customer satisfaction has become a key area of focus in the Federal Government. The United States Department of Labor Employment and Training Administration is seeking to determine the degree to which the Unemployment Insurance (UI) system provides satisfactory service to its claimant customers. This project is for the development and implementation of a nationally representative customer satisfaction survey for UI claimants only. The objectives of this survey are to support the Federal role in such tasks as oversight and national program development. The survey satisfies the intent of Executive Order 12862 by enabling the Department of Labor to develop customer satisfaction benchmarks to which individual States may compare results from their own surveys.

II. Current Actions

The survey will be administered to 3,000 claimants in sixteen different States. Each of the States will provide the data on claimants. It is estimated that the burden of collecting this administrative data is 80 hours per State for a total of 1,280 hours. The survey will then be done over the telephone in an average of fifteen minutes per claimant (750 total burden hours). Computer Assisted Telephone Interviewing (CATI) will be used to conduct the survey in order to reduce the burden on respondents and provide greater accuracy. All respondents will be informed that the information they provide will be kept strictly confidential. All data will be collected by a private contractor and only information that will preclude any individual's identification will be provided to the U.S. Department of Labor. This data collection process from individuals and states will occur only once. The total burden of collecting the administrative data and conducting the survey is estimated to be 2,030 hours.

Public comments are being solicited to 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.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Unemployment Insurance Claimant Customer Satisfaction Survey.

OMB Number: 1205—New.

Affected Public: Individuals or Households and State Government.

Cite/reference	Total respondents	Frequency	Total responses	Avg. time per resp.	Burden hours
State	16	One-time	16	80 hrs	1,280
Survey	3,000	One-time	3,000	15 min	750
Totals					2,030

Total Burden Cost (capital/startup): $43,551.

Total Burden Cost (operating/maintaining): $94,296.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, D.C., this fourth day of June, 1997.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 97–15261 Filed 6–10–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decision thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is

published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in Parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 6th day of June 1997.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–15277 Filed 6–10–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

OSHA Data Collection System

[Docket ICR 97–17]

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice; proposed collection request; submitted for public comment and recommendations.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection request for the OSHA Data Collection System. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 11, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 97–17, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph DuBois, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Ave., NW., Washington DC 20210, (202) 219–6463. Copies of the reference information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Barbara Bielaski at (202) 219–7177. For electronic copies of the information collection request on the OSHA Data Collection System, contact the Labor News Bulletin Board (202) 219–4784; or OSHA's WebPage on Internet at http://www.osha.gov/ (click on *Standards*).

SUPPLEMENTARY INFORMATION:

Background

To meet many of OSHA's program needs, OSHA is proposing to continue its data system to collect occupational injury and illness data and information on number of workers employed and number of hours worked from establishments in portions of the private sector. OSHA will collect data from 80,000 employers required in 1997 to create and maintain records pursuant to CFR Part 1904. These data will allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing serious safety and health problems. Successful implementation of the data collection system is critical to OSHA's reinvention efforts. The data collected will allow the Agency to deal with a larger number of employers without massive increases in resources, will reduce intrusive interventions in workplaces that are relatively safe, and will lead to improved workplace safety and health for America's workers. The data collection system is also critical to the Agency's Government Performance and Results Act (GPRA) requirements. The data will enable OSHA to monitor the results of agency activities, quantify and evaluate the successes and failure of its various programs based on program results, identify the most efficient and effective program mix, and promote the development of programs and policies based on outcome data.

Current Action

This notice requests OMB approval of the paperwork requirements for the OSHA Data Collection System.

Type of Review: Extension of existing approval.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title OSHA Data Collection System.

OMB Number: 1218–0209.

Agency Number: ICR–97–17.

Frequency: Annually.

Affected Public: Business or other for-profit and State, Local or Tribal Government.

Form: OSHA Form 196A and OSHA Form 196B.

Number of Respondents: 80,000.

Estimated Time Per Respondent: 30 minutes

Estimated Total Burden Hours: 35,000 hours

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden
OSHA Form 196A	10,000	Annually	10,000	30 minutes	(*)
OSHA Form 196B	70,000	Annually	70,000	30 minutes	35,000 hours.

Total Burden Cost (capital/startup/operating/maintenance): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will be also become a matter of public record.

Signed this 3 day of June 1997.

Stephen A. Newell,

Director, Office of Statistics.

[FR Doc. 97–15262 Filed 6–11–97; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Folk and Traditional Arts Section (Creation and Presentation, Heritage and Preservation, Education and Access, and Planning and Stabilization categories) to the National Council on the Arts will be held on July 7–11, 1997. The panel will meet from 9:00 a.m. to 7:00 p.m. on July 7 and 10; from 9:00 a.m. to 5:30 p.m. on July 8 and 11; and from 10:00 a.m. to 3:30 p.m. on July 9. The panel will meet in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506. A portion of this meeting, from 10:30 a.m. to 12:00 p.m. on July 11 will be open to the public for a policy and guidelines discussion.

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on July 7 and 10; from 9:00 a.m. to 5:30 p.m. on July 8; from 10:00 a.m. to 3:30 p.m.; from 9:00 a.m. to 10:30 a.m. and from 1:00 p.m. to 5:30 p.m. on July 11, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: June 5, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–15173 Filed 6–10–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Design Section (Creation and Presentation, Heritage and Preservation, Education and Access, and Planning and Stabilization categories) to the National Council on the Arts will be held on July 24, 1997. The panel will meet from 9:00 a.m. to 4:30 p.m. in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506. A portion of this meeting, from 1:30 p.m. to 2:30 p.m., will be open to the public for a policy and guidelines discussion.

The remaining portions of this meeting, from 9:00 a.m. to 12:30 p.m. and from 2:30 p.m. to 4:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Futher information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: June 5, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–15236 Filed 6–10–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the

Combined Arts Advisory Panel, Museum/Visual Arts Section (Heritage and Preservation category) to the National Council on the Arts will be held on July 15–16, 1997. The panel will meet from 9:00 a.m. to 7:00 p.m. on July 15 and from 9:00 a.m. to 5:00 p.m. on July 16, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. A portion of this meeting, from 11:00 a.m. to 12:30 p.m. and from 1:00 p.m. to 2:00 p.m. on July 16, will be open to the public for a policy and guidelines discussion.

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on July 15 and from 9:00 a.m. to 11:00 a.m. and 2:00 p.m. to 5:00 p.m., on July 16 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 5, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–15237 Filed 6–10–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development

Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel In Human Resource Development (#1199).

Date and Time: June 23, 1997: 8:00 a.m. to 5:00 p.m.; June 24, 1997: 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bobby Wilson, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1634.

Purpose of Meeting: To provide advice and recommendations concerning nominations submitted to NSF for financial support.

Agenda: To review and evaluate nominations for Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the nominations. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 5, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–15176 Filed 6–10–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings.

Name and Committee Code: Special Emphasis Panel in Materials Research #1293.

Dates and Times: June 25, 1997; 6:00 pm–10:00 pm, June 26, 1997; 8:00 am–6:00 pm, June 27, 1997; 8:00 am–5:00 pm.

Place: Liquid Crystal Institute/Materials Science Building, Kent State University, Kent, OH

Type of Meeting: Closed.

Contact Person: Dr. David L. Nelson, Coordinating Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1817.

Purpose of Meeting: To provide advice and recommendations concerning support for the Center for Advanced Liquid Crystalline Optical Materials (ALCOM), Science and Technology Center, Kent State University.

Agenda: To review and evaluate a proposal and provide advice and recommendations as part of the review process for proposal submitted to the National Science Foundation.

Reason For Closing: The activity being evaluated may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated. June 5, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–15177 Filed 6–10–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCES FOUNDATION

Special Emphasis Panel in the Division of Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in the Division of Physics (#1208).

Date and Time: Thursday, June 26, 1997 8:30 a.m.–5:00 p.m., Friday, June 27, 1997 8:30 a.m.–5:00 p.m.

Place: Thursday, June 26, 1997, Room 370N; Friday June 27, 1997, Room 370N 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John W. Lightbody, Executive Officer, Division of Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1806.

Purpose of Meeting: To provide advice and recommendations concerning the Borexino Review submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 5, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–15178 Filed 6–10–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Communication.

Date and Time: June 30, 1997; 8:30 a.m. to 6:00 p.m., July 1, 1997; 8:30 a.m. to 4:00 p.m.

Place: Rooms 310, 320, 340, 360, 370, 380, 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Senior Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Learning and Intelligent Systems Initiative (LIS) Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: June 5, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–15175 Filed 6–10–97; 8:45 am]

BILLING CODE 7555–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of Regular Meeting.

SUMMARY: The Compact Commission will hold its regularly scheduled monthly meeting to consider certain matters relating to administration and certain issues relating to implementation of the compact over-order price regulation.

DATES: The meeting is scheduled for June 19, 1997 commencing at 10:00 a.m. to adjournment.

ADDRESS: The meeting will be held in Room 301–303 at the New Hampshire Legislative Office Building located on 33 North State Street in Concord, NH (exit 14 off Interstate 93).

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Northeast Dairy Compact Commission will hold its regularly scheduled monthly meeting. The Compact Commission will consider certain administrative matters, including staffing and budget issues and the establishment of an ad hoc committee on regional cost of production. The Commission will also consider procedures to implement Compact Sections 16 and 17, relative to the protection of the rights of any objectors to the compact over-order price regulation during administrative and judicial review of their objections to this regulation.

(Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and all other applicable Articles and Sections, as approved by Section 147, of the Federal Agriculture Improvement and Reform Act (FAIR ACT), Pub. L. 104–127, and as thereby set forth in S.J. Res. 28(1)(b) of the 104th Congress; Finding of Compelling Public Interest by United States Department of Agriculture Secretary Dan Glickman, August 8, 1996 and March 20, 1997. (b) Bylaws of the Northeast Dairy Compact Commission, adopted November 21, 1996)

Daniel Smith,

Executive Director.

[FR Doc. 97–15233 Filed 6–10–97; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision

2. *The title of the information collection:* 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities''.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for licenses and amendments thereto to construct and operate nuclear power plants, preliminary or final design approvals, design certifications, research and test facilities, reprocessing plants and other utilization and production facilities, licensed pursuant to the Atomic Energy Act of 1954, as amended (the Act) and to monitor their activities.

5. *Who will be required or asked to report:* Licensees and applicants for nuclear power plants and non-power reactors (research and test facilities).

6. *An estimate of the number of responses:* 7,985.

7. *The estimated number of annual respondents:* 178.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 5.6M (approximately 2.9M reporting hours and 2.7M recordkeeping hours); an average of 31.3K per respondent.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 50 of the NRC's regulations, ''Domestic Licensing of Production and Utilization Facilities,'' specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may make determinations necessary to promote the health and safety of the public, in accordance with the Act. The reporting and recordkeeping requirements contained in 10 CFR part 50 are mandatory for the affected licensees and applicants.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339.

Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by July 11, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 5th day of June 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–15272 Filed 6–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Proposed rule, 10 CFR Parts 30 and 32—Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea.

3. The form number if applicable: NRC Form 313.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Manufacturers and distributors of the radioactive drug containing Carbon-14 urea.

6. An estimate of the number of responses: 3.

7. The estimated number of annual respondents: 3.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 54 hours initially; thereafter 48 hours annually—16 hours for each of 3 respondents (48 hours per year reporting burden and a one-time 6-hour recordkeeping burden, 2 hours for each of 3 respondents)

9. An indication of whether Section 3507(d). Pub. L. 104–13 applies: Applicable.

10. Abstract: In response to a petition for rulemaking submitted by Tri-Med Specialties, Inc., the NRC is proposing to amend its regulations to allow NRC licensees to distribute a radioactive drug containing one microcurie of carbon-14 urea to any person for ''in vivo'' diagnostic use. The adoption of this amendment would make the drug more widely available, thus reducing costs to patients.

Submit, by July 11, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC. The proposed rule indicated in ''The title of the information collection'' is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by July 11, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0001), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 5th day of June, 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–15273 Filed 6–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Northern States Power Company; Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2 Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–42 and DPR–60, issued to Northern States Power Company (NSP, the licensee), for operation of Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, located in Goodhue County, Minnesota.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments would revise the technical specifications (TS) to take credit for soluble boron in the spent fuel pool in maintaining an acceptable margin of subcriticality. However, even if the spent fuel pool were to be completely filled with unborated water, the licensee's dilution event calculations show that the spent fuel pool would remain subcritical.

The Need for the Proposed Action

Currently, compliance with the TS requirement to maintain criticality (k_{eff}) in the spent fuel pool to less than 0.95 with unborated water is accomplished through the use of Boraflex, a neutron absorber. However, recent tests have indicated that the Boraflex is showing degradation induced by gamma radiation. Maintaining a boron concentration of 1800 parts per million in the spent fuel pool is more than sufficient to ensure that the k_{eff} is maintained below 0.95.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the licensee's proposal to take credit for soluble boron in the spent fuel pool water to maintain k_{eff} less than or equal to 0.95 is acceptable.

The change 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 allowable individual or cumulative occupational 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 involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact 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 Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Minnesota State official, Mr. Michael McCarthy of the Department of Public Services, on May 5, 1997, regarding the proposed actions. Mr. McCarthy 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 July 28, 1995, as revised February 21, 1997, which 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 room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

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

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–15274 Filed 6–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Project No. 697]

Notice of Issuance of Staff's Safety Evaluation on DOE's Report on Tritium-Producing Burnable Absorber Rod Lead Test Assemblies

The U.S. Department of Energy (DOE) is considering the use of commercial light water reactors to produce tritium in order to maintain the strategic stockpile. On December 4, 1996, as revised on March 17, 1997, DOE submitted a report to the U.S. Nuclear Regulatory Commission (NRC) entitled, ''Report on the Evaluation of the Tritium Producing Burnable Absorber Rod Lead Test Assembly.'' This report contained information to allow the NRC staff to determine whether the use of a commercial light-water reactor to irradiate a limited number of tritium-producing burnable absorber rods (TPBARs) in lead test assemblies (LTAs) requires prior NRC review and approval. The NRC staff has reviewed the DOE report and has prepared its safety evaluation.

The staff's safety evaluation concludes that DOE's proposal involves at least one issue requiring prior Commission review and approval; therefore, an NRC licensee seeking to perform the LTA irradiation must submit an amendment to its facility operating license prior to placing the TPBAR LTAs in the reactor core. The staff's safety evaluation is being published as NUREG–1607, ''Safety Evaluation Report Related to the Department of Energy's Proposal for the Irradiation of Lead Test Assemblies Containing Tritium-Producing Burnable Absorber Rods in Commercial Light-Water Reactors.''

NUREG–1607 is available for public inspection and copying for a fee at the Commission's Public Document Room, the Gelman Building, 2120 L Street (Lower Level), NW., Washington, DC. Printed copies of NUREG–1607 are available from the Superintendent of Documents, U.S. Government Printing Office, P. O. Box 37082, Washington, DC 20402–9328.

FOR FURTHER INFORMATION CONTACT: J. H. Wilson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1108; e-mail JHW1@nrc.gov.

Dated at Rockville, Maryland, this 2nd day of June, 1997.

For the Nuclear Regulatory Commission.

Marylee M. Slosson,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–15275 Filed 6–10–97; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 USC, Chapter 35), the Peace Corps is requesting approval from the Office of Management and Budget for the continued use of the RPCV County Survey to be used by the World Wise Schools (WWS) program. A copy of the information collection may be obtained from Alyce P. Hill, Office of World Wise Schools, Peace corps, 1990 K St., NW, Washington DC 20525. Ms. Hill may be contacted at (202) 606–3294. The purpose of this notice is to allow an additional 30 days for public comments. This process is conducted in accordance with 5 CFR Part 1320.10; the initial notice was published in the **Federal Register** on April 16, 1997 (pp. 18659), during which time no comments were received by the agency. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; 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; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection

techniques, when appropriate, and other forms of information technology. Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: RPCV Country Survey.

Need for and use of the Information: World Wise Schools needs this information to accurately describe other countries and its educational materials. The information collected assists WWS and the agency in fulfilling the third goal of Peace Corps as required by Congressional legislation and to enhance the Office of World Wise Schools global education program.

Respondents: Returned Peace Corps Volunteers (RPCVs).

Respondents obligation to reply: Voluntary.

Burden on the Public:

a. Annual reporting burden: 75 hrs
b. Annual record keeping burden: 0 hrs
c. Estimated average burden per response: 15 min
d. Frequency of response: on occasion
c. Estimated number of likely respondents: 300
f. Estimated cost to respondents: $3.03

This notice is issued in Washington, DC, on June 6, 1997.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 97–15219 Filed 6–10–97; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 USC, Chapter 35), the Peace Corps is requesting approval from the Office of Management and Budget for the continued use of the Teacher Brochure/Enrollment Form to be used by the World Wise Schools program. A copy of the information collection may be obtained from Alyce P. Hill, Office of World Wise Schools, Peach Corps, 1990 K St., NW, Washington DC 20525. Ms. Hill may be called at (202) 606–3294. The purpose of this notice is to allow an additional 30 days for public comments. This process is conducted in accordance with 5 CFR Part 1320.10; the initial notice was published in the **Federal Register** on April 16, 1997 (pp. 18659), during which time no comments were received by the agency. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; 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; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Teacher Brochure/Enrollment Form.

Need for and use of the Information: This form is completed voluntarily be educators throughout the country. This information will be used by WWS to enroll classrooms in the program and to determine what changes need to be addressed to meet the needs of participating teachers and the Peace Corps Volunteers. Enrollment in this program also fulfills the third goal of Peace Corps as required by Congressional legislation and to enhance the Office of World Wise Schools global education program.

Respondents: Educators throughout the public and private school systems in the United States.

Respondents obligation to reply: Voluntary.

Burden on the Public:

a. *Annual reporting burden:* 833 hrs
b. *Annual record keeping burden:* 0 hrs
c. *Estimated average burden per response:* 10 min
d. *Frequency of response:* on occasion & annually
e. *Estimated number of likely respondents:* 5,000
f. *Estimated cost of respondents:* $2.02

This notice is issued in Washington, DC, on June 6, 1997.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 97–15220 Filed 6–10–97; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38715; File No. SR–NASD–97–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. in Providing an Interpretation to NASD Conduct Rule 2110 Regarding Anti-Intimidation/Coordination Activities of Member Firms and Persons Associated With Member Firms

June 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 7, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association;;) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing IM–2110–5 to prohibit certain anti-competitive and coordination conduct of member broker/dealers and persons associated with member broker/dealers. Below is the text of the proposed rule change. Proposed new language is in italics.

IM–2110–5. Anti-Intimidation/Coordination

The Board of Governors is issuing this interpretation to codify a longstanding policy. It is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to coordinate the prices (including quotations), trades, or trade reports of such member with any other member or person associated with a member; to direct or request another member to alter a price (including a quotation); or to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or quotation, whether displayed on any automated system operated by The Nasdaq Stock

[1] 15 U.S.C. § 78s(b)(1)(1988).

Market, Inc. (Nasdaq), or otherwise, or refusals to trade or other conduct that retaliates against or discourages the competitive activities of another market maker or market participant. Nothing in this interpretation respecting coordination of quotes, trades, or trade reports shall be deemed to limit, constrain, or otherwise inhibit the freedom of a member or person associated with a member to:

(*1*) *Set unilaterally its own bid and ask in any Nasdaq security, the prices at which it is willing to buy or sell any Nasdaq security, and the quantity of shares of any Nasdaq security that it is willing to buy or sell;*

(*2*) *Set unilaterally its own dealer spread, quote increment, or quantity of shares for its quotations (or set any relationship between or among its dealer spread, inside spread, or the size of any quote increment) in any Nasdaq security;*

(*3*) *Communicate its own bid or ask, or the prices at or the quantity of shares in which it is willing to buy or sell any Nasdaq security to any person, for the purpose of exploring the possibility of a purchase or sale of that security, and to negotiate for or agree to such purchase or sale;*

(*4*) Communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any Nasdaq security, to any person for the purpose of retaining such person as an agent or subagent for the member or for a customer of the member (or for the purpose of seeking to be retained as an agent or subagent), and to negotiate for or agree to such purchase or sale;

(5) Engage in any underwriting (or any syndicate for the underwriting) of securities to the extent permitted by the federal securities laws;

(6) Take any unilateral action or make any unilateral decision regarding the market makers with which it will trade and the terms on which it will trade unless such action is prohibited by the second and third sentences of this Interpretation; and

(7) Deliver an order to another member for handling, provided, however, that the conducted described in (1) through (7) is otherwise in compliance with all applicable law.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 8, 1996, the SEC issued an Order pursuant to Section 19(h)(1) of the Act (''SEC Order''), making certain findings about the NASD and conduct on the Nasdaq Market, and imposing remedial sanctions.[2] Among other findings, the SEC determined that certain activities of Nasdaq market makers had directly and indirectly impeded price competition in the Nasdaq market. In addition, the SEC determined that a number of Nasdaq market makers had coordinated quotations, trades and trade reports with other Nasdaq market makers for the purpose of advancing or protecting the market maker's proprietary trading interests. Based on the SEC's specific findings of certain anti-competitive behavior of Nasdaq market makers in the Nasdaq Stock Market, the NASD agreed to certain undertakings. In particular, Undertaking 11 requires the NASD ''[t]o propose a rule or rule interpretation for Commission approval which expressly makes unlawful the coordination by or among market makers of their quotes, trades and trade reports, and which prohibits retribution or retaliatory conduct for competitive actions of another market maker or other market participant.'' Undertaking 12 requires the NASD ''[t]o enforce Article III, Section 1 of the NASD Rules of Fair Practice (currently NASD Conduct Rule 2110), with a view to enhancing market maker competitiveness by: (a) Acting to eliminate anti-competitive or unlawful enforced or maintained industry pricing conventions, and to discipline market makers who harass other market makers for narrowing the displayed quotations in the Nasdaq market, trading not more than the quantities of securities they are required to trade under the NASD's rules, or otherwise engaging in competitive conduct; (b) acting to eliminate coordination between or among market makers or quotes, trades and trade reports; and (c) acting to eliminate concerted discrimination and concerted refusals to deal by market makers.''

To comply with NASD Undertaking 11, the NASD has prepared the following rule interpretation of NASD Conduct Rule 2110 (formerly Article III, Section 1 of the NASD's Rules of Fair Practice). The NASD believes that the conduct described in Undertaking 11 already is proscribed by existing NASD Rule 2110, which requires members to observe high standards of commercial honor and just and equitable principles of trade. The conduct described in the interpretation is fundamentally inconsistent with the obligations of member firms to their customers and is inimical to the public interest in fair and efficient securities markets. Although such conduct already is prohibited, this interpretation is designed to address specifically certain of the findings contained in the SEC Order and to emphasize the importance placed by the NASD on the enforcement of the prohibition.

This rule interpretation defines as conduct inconsistent with just and equitable principles of trade certain conduct by and among members firms, and sets forth specific exclusions (numbered 1 through 7) which identify bona fide commercial activities by and among member firms. The interpretation identifies three general areas of conduct that are prohibited. The first part of the interpretation prohibits coordinating activities by member firms involving quotations, prices, trades and trade reporting. Conduct covered by this prohibition would include, but not be limited to agreements to report trades late or inaccurately, or to agree to maintain certain minimum spreads or quote sizes above the legal minimums.

The second part of the interpretation prohibits ''directing or requesting'' another member to alter prices or quotations. This would include situations in which a market maker requests another market maker to move or adjust its displayed quotations to accommodate the requesting market maker. This prohibition does not extend to activity, identified in exclusion number 7, that permits a member to route customer orders to market makers for handling or a correspondent firm of the member to ask a market maker to represent an order in the market maker's quote.

The third part of the interpretation relates to conduct that threatens, harasses, coerces, intimidates or otherwise attempts improperly to influence another member in a manner that interferes with or impedes the forces of competition among member firms in the Nasdaq Stock Market. This

[2] *See* Securities Exchange Act Release No. 37538 (August 8, 1996), SEC's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions.

part of the prohibition is intended to reach conduct that goes beyond legitimate bargaining among member firms. This conduct may include, among other things, refusals to trade, improper systems messages, trading in odd lots, and other conduct intended to influence a member to engage in improper market activity or refrain from legitimate market activity. However, as identified in exclusion number 6, this language would not prohibit a member from taking unilateral action in selecting with whom to trade and under what terms, based on legitimate market and commercial criteria (e.g., credit exposure).

In addition, this interpretation does not prohibit a market maker from contracting another market maker in a locked or crossed market situation to attempt to unlock or uncross the market. Moreover, the overall prohibition applies to primary market as well as secondary trading activities.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[3] in that regulating the conduct of member broker/dealers and persons associated with member broker/dealers by prohibiting anti-competitive conduct is in furtherance of the requirements that the Association's rules to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents,[4] the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 2, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–15170 Filed 6–10–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. § 78*o*–3.

[4] The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**. The NASD believes that the conduct described in the proposed rule change is already proscribed by existing NASD Rule 2110.

[5] 17 CFR 200.30–3(a)(12) (1996).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38720; File No. SR–NASD–97–26]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Expansion of the Pilot for the NASD's Rule Permitting Market Makers To Display Their Actual Quotation Size

June 5, 1997.

On April 11, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed change to NASD Rule 4613(a)(1)(C). The proposal would allow market makers to quote their actual size by reducing the minimum quotation size requirement for market makers in certain securities listed on The Nasdaq Stock Market (''Nasdaq'') to one normal unit of trading (''Actual Size Rule''). The Actual Size Rule presently applies to a group of fifty Nasdaq securities on a pilot basis.[1] The NASD has proposed to extend this pilot program to December 1997 and to add an additional 100 stocks to the pilot program. The Commission has already received comments from many individual investors and other market participants on the ongoing pilot.

On June 3, 1997, the NASD filed with the Commission a revised report containing its economic analysis of the operation of the Actual Size Rule for the group of 50 stocks in the pilot, as requested by the Commission.[2] The study examines the effects of the removal of the 1,000-Share Quote Size Rule on market quality.

The NASD's study compares the market quality of pilot stocks with the market quality of peer stocks in the next tranche of stocks that became subject to the Order Handling Rules, but remained subject to the 1,000-Share Quote Size Rule. The study: (1) Summarizes the relevant academic literature; (2) empirically assesses market quality for both groups pre- and post-rule change by examining spread, volatility, depth,

[1] The approval of the pilot program was announced in Securities Exchange Act Release No. 38156 (January 10, 1997), 62 FR 2415 (January 16, 1997). The approval of the extension was announced in Securities Exchange Act Release No. 38156 (April 15, 1997), 62 FR 19373 (April 21, 1997).

[2] A copy of the executive summary of the report is available at Nasdaq's World Wide Web site at ''http://www.nasdaq.com''. Members of the public may also download a file containing the entire report at this site.

and liquidity; and (3) examines the use of automatic execution systems for the pilot stocks, Nasdaq's Small Order Execution System (''SOES''), and some private systems to assess whether investors continue to have reasonable access to market maker capital.

The NASD asserts that the evidence analyzed in the study reveals that the pilot stocks and non-pilot stocks have experienced virtually the same improvements in market quality since implementation of the SEC's Order Handling Rules. Specifically, the NASD says that it found no statistically significant basis to conclude that the market quality of the pilot stocks has been affected as a result of removal of the 1,000-Share Quote Size Rule. In addition, the NASD found that investors in the pilot stocks continue to have substantial and reasonable access to market maker capital through both SOES and market makers' proprietary automatic execution systems.

In order to give the public additional time to comment on this analysis, the comment period for the NASD's current proposal has been extended at the Commission's request to July 3, 1997. A copy of the report is available in the Commission's Public Reference room in File No. SR–NASD–97–26.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–97–26 and should be submitted by July 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

[3] 17 CFR 200.30–3(a)(12) (1989).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–15331 Filed 6–6–97; 4:08 pm]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38712; File No. SR–PCX–97–19]

June 3, 1997.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Its Specialist Evaluation Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 29, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Propose Rule Change

The PCX is proposing to extend its pilot program regarding the evaluation of its equity specialists until January 1, 1998. In addition, the Exchange is proposing to implement certain changes to the pilot program.

Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it receive don the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 1, 1996, the Commission approved a nine-month pilot program for the evaluation of PCX equity specialists.[1] The Exchange is now proposing to extend the pilot program for an additional six month period, until January 1, 1998. The reason for the extension is that the Exchange needs more time to evaluate the impact of the SEC's new order handling rules[2] on the performance criteria. During the extension of the pilot, the Exchange will determine an organization overall passing score and individual passing scores for each criterion used in the pilot program. In addition, the Exchange proposes to implement for use in the evaluation program, beginning with the third quarter review period of 1997 (*i.e.*, July 1, 1997 to September 30, 1997), certain programming changes requested by the Commission in its October 1, 1996 order approving the pilot program. Specifically, the Commission requested that the Exchange reprogram its systems so that the following criteria are calculated using the NBBO instead of the primary market quote: Trading Between the Quote, Book Display Time, and Quote Performance (Equal or Better Quote Performance and Better Quote Performance). The description of these performance criteria will be modified as follows:

a. *Trading Between the Quote*[3]

''Trading Between the Quote'' currently measures the number of market and marketable limit orders that are executed between the best primary market bid and offer. For this criterion

[1] Prior to the adoption of the pilot program, PCX Rule 5.37(a) provided that the Exchange's Equity Allocation Committee (''EAC'') evaluate all registered specialists on a quarterly basis and that each specialist receive an overall evaluation rating based on three criteria of specialist performance: (1) Specialist Evaluation Questionnaire Survey (''Questionnaire''); (2) SCOREX Limit Order Acceptance Performance; and (3) National Market System Quote Performance. The pilot program modifies Rule 5.37(a) by adding three new criteria of performance and eliminating one performance criterion. The new criteria are: (1) Executions (itself consisting of four criteria; (a) Turnaround Time; (b) Holding Orders Without Action; (c) Trading Between the Quote; and (d) Executions in Size Greater Than BBO); (2) Book Display Time; and (3) Post-1 p.m. Parameters. The SCOREX Limit Order Acceptance Performance criterion has been eliminated. The pilot also adds more questions to the Questionnaire and expands the National Market System Quote Performance criterion (renamed Quote Performance under the pilot) to include within it a submeasure for bettering the quote. For a more detailed description of the performance criteria utilized in the PCX's pilot program, see Securities Exchange Act Release No. 37770 (October 1, 1996), 61 FR 52820 (October 8, 1996) (File No. SR–PSE–96–28). *See generally* PCX Rule 5.37 (description of the standards and procedures applicable to the EAC's evaluation of specialists).

[2] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (File No. S7–30–95).

[3] ''Trading Between the Quote'' is one of the four criteria which together constitute ''Executions'' criterion. *See supra* note 1.

to count toward the overall evaluation score, ten orders or more must have been executed during the quarter in which the specialist is being evaluated. If less than ten orders are executed, this criterion will not be counted and the rest of the evaluation criteria will be given more weight.

When a market or marketable limit order is executed, the execution price is compared to the primary market bid and offer. The specialist will be awarded points based on the percentage of orders the specialist receives that are executed between the primary market bid and offer. If the execution price falls between the primary market bid and offer, the trade is counted as one that traded between the quote at the time of execution. Each time a trade is executed, the primary market quote will be noted. If the spread of that quote is two or more trading fractions apart, that trade will count as one eligible for the comparison of the execution price to the quote.

The Exchange is now proposing to continue using this criterion, but to replace references to the ''primary market bid and offer'' with references to the ''NBBO.''

b. *Book Display Time*

This criterion calculates the percentage of book shares at the best price in the book that is displayed in the specialist's quote, by symbol, and the duration of time that each percentage is in effect. This criterion rates the P/COAST book displayed 100% of the time. The sizes of all open buy limit orders at the best price for the symbol in the specialist's book are totaled and compared to the bid size quote. The sizes of all open sell limit orders at the best price for the symbol in the book are totaled and compared to the offer size quote. This will be done for each symbol traded by the specialist, but only for those orders within the primary market quote. Limit orders in the book that were priced beyond the primary market quote will not be included; they will not be executed until they reach the price in the primary market quote, so the specialist should not be required to cover them in his (her) quote sizes.

The Exchange is now proposing to continue using this criterion, but to replace references to the ''primary market bid and offer'' to references to the ''NBBO.''

c. *Quote Performance*

This criterion, on which 10% of each specialist evaluation is based, consists of two submeasures: (a) Equal or Better Quote Performance; and (b) Better Quote Performance.

Equal or Better Quote Performance calculates for each issue traded, the percentage of time in which a specialist's bid or offer is equal to or better than the primary market quote with a 500 share market size or the primary market size, whichever is less, with a 200 share minimum.

Better Quote Performance calculates for each issue traded, the percentage of time in which a specialist's bid or offer is better than the primary market quote with a 500 share market size or the primary market size, whichever is less, with a 200 share minimum.

The Exchange is proposing to continue using this criterion, but to replace references to the ''primary market bid and offer'' with references to the ''NBBO.''

Further, the Commission has requested that the Exchange file a report regarding the Exchange's experience with the pilot.

This report has been filed with the Commission under separate cover. In addition, the Exchange will submit a proposed rule change with the Commission pursuant to Rule 19b–4 under the Act [4] by November 15, 1997, that will specify an overall passing score for the performance evaluation and individual passing scores for each criterion, as well as a request to further extend the pilot beyond January 1, 1998.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act [5] in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–97–19 and should be submitted by July 2, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–15255 Filed 6–10–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 240.19b–4.

[5] 15 U.S.C. 78f(b)(5).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before July 11, 1997. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Request for Management and Technical Assistance.

Form No: SBA Form 641B.

Frequency: On Occasion.

Description of Respondents: Individuals Interested in Using the BIC.

Annual Responses: 60,000.

Annual Burden: 12,000.

Dated: June 5, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–15268 Filed 6–10–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in 62 FR 14718–14719, March 27, 1997.

DATES: Comments must be submitted on or before July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, MARAD Clearance Officer, (202) 366–2811, and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title: Monthly Report of Ocean Shipments Moving Under Export-Import Bank Financing.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2133–0013.

Affected Entities: Export-Import Bank Financed Foreign Borrowers.

Abstract: Title 46 App. U.S.C. 1241–1, Public Resolution 17, 73rd Congress (PR 17), requires the MARAD to monitor and enforce the U.S.-flag shipping requirements relative to the loans/guarantees extended by the Export-Import Bank (Eximbank) to foreign borrowers. PR 17 requires that all shipments financed by Eximbank and that move by sea, must be transported exclusively on U.S.-flag registered vessels unless a waiver is obtained from MARAD.

Need and Use of the Information: The prescribed monthly report is necessary for MARAD to fulfill its responsibilities under PR 17, to ensure compliance of ocean shipping requirements operating under Eximbank financing and to ensure equitable distribution of shipments between U.S. flag and foreign ships. MARAD will use this information to report annually to Congress, the total shipping activities during the calendar year.

Annual Responses: 336.

Estimated Annual Burden: 168 hours.

Comments: Send all comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Issued in Washington, DC, on June 6, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–15304 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circulars for Airport Lighting

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability, proposed advisory circulars.

SUMMARY: The Federal Aviation Administration (FAA) announces (1) the availability of proposed Advisory Circular (AC) 150/5340–28, Low Visibility Taxiway Lighting Systems, which provides standards for the design, installation and maintenance of taxiway centerline lights, stop bars, runway guard lights, and clearance bars, (2) the proposed cancellation of AC 150/5340–19, Taxiway Centerline Lighting System, (3) the availability of AC 150/5345–3E, FAA Specification for L–821, for Control of Airport Lighting, this circular has been rewritten to include control panels for stop bar lighting systems and for land and hold short lighting systems, (4) the proposed cancellation of AC 150/5345–3D, Specification for L–821 Panels for Remote Control of Airport Lighting, (5) the availability of AC 150/5345–46B, Specification for Runway and Taxiway Light Fixtures, which includes new specifications for stop bar and runway guard light fixtures, updates the classification of lighting fixtures, photometric requirements, chromaticity requirements, and applicable documents and document sources. In addition, instruction manuals have been made mandatory and a new option for an automatic lampchanger has been added, and (6) the proposed cancellation of AC 150/5345–46A, Specification for Runway and Taxiway Light Fixtures. Paper copies of these documents may be obtained by contacting the address shown below. Electronic copies of these documents are available over the Internet at www.faa.gov/arp/draftacs.htm.

DATES: Comments must be received by July 25, 1997.

ADDRESSES: Comments should be sent to the Federal Aviation Administration, Engineering and Specifications Division (AAS–200), 800 Independence Ave., S.W., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: John L. Rice, AAS–200, at (202) 267–8745.

Raymond T. Uhl,

Deputy Director, Office of Airport Safety and Standards, AAS–2.

[FR Doc. 97–15305 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 20–128A, Design Considerations for Minimizing Hazards Caused by Uncontained Turbine Engine and Auxiliary Power Unit Rotor Failure

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20–128A, Design Considerations for Minimizing Hazards Caused by Uncontained Turbine Engine and Auxiliary Power Unit Rotor Failure. This AC sets forth a method of compliance with the requirements of the Federal Aviation Regulations pertaining to design precautions taken to minimize the hazards to an airplane in the event of uncontained engine or auxiliary power unit (APU) rotor failures. The guidance provided within this AC is harmonized with that of the European Joint Aviation Authorities (JAA) and is intended to provide a method of compliance that has been found acceptable.

DATES: Advisory Circular 20–128A was issued by the Manager, Aircraft Engineering Division, AIR–100, on March 25, 1997.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, 3341Q 75th Avenue, Landover, MD 20785, or faxing your request to that office at 301–5394.

Issued in Renton, Washington, on June 3, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–15310 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and Hold Scoping Meetings for Los Angeles International Airport, Los Angeles, California

AGENCY: Federal Aviation Administration.

ACTION: Notice to hold three (3) public scoping meetings and one (1) Governmental and Public Agency scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for development recommended by the Master Plan for Los Angeles International Airport, Los Angeles, California. To ensure that all significant issues related to the proposed action are identified, three (3) public scoping meetings and one (1) governmental and public agency scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Environmental Protection Specialist, AWP–611.2, Planning Section, Airports Division, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009–2007, Telephone: 310/725–3615. Comments on the scope of the EIS should be submitted to the address above and must be received no later than Thursday, July 31, 1997.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) in cooperation with the city of Los Angeles, California, will prepare an Environmental Impact Statement for future development recommended by the Master Plan for Los Angeles International Airport (LAX). The need to prepare an Environmental Impact Statement (EIS) is based on the procedures described in FAA Order 5050.4A, Airport Environmental Handbook. LAX is a commercial service airport located within a standard metropolitan statistical area and the proposed development includes construction of new runway(s) capable of accommodating air carrier aircraft requiring FAA approval of the Airport Layout Plan, the area around the airport contains non-compatible land uses in terms of aircraft noise; and the proposed development is likely to be controversial.

The city of Los Angeles, pursuant to the California Environmental Quality Act of 1970 (CEQA) will also prepare an Environmental Impact Report (EIR) for the proposed development. In an effort to eliminate unnecessary duplication and reduce delay, the document to be prepared, will be a joint EIR/EIS in accordance with the President's Council on Environmental Quality Regulations described in 40 Code of Federal Regulations §§ 1500.5 and 1506.2.

The Joint Lead Agencies for the preparation of the EIR/EIS will be the Federal Aviation Administration and the city of Los Angeles, California.

The following master planning development concepts and the No Action Alternative are proposed to be evaluated in the EIR/EIS as described below:

Concept 1

- Construction of a new 6,000 foot long runway along the northern border of the airport.
- Relocation to the south and extension of Runways 6L/24R and 6R/24L to lengths of 10,000 and 12,000 feet respectively.
- Relocation to the south and extension of Runway 7R/25L to 12,000 feet in length.
- Terminal Building Expansion and associated terminal area improvements including adding 100 narrow body equivalent aircraft gates.
- Reduction of the ancillary facilities area to approximately 228 acres and relocating the fuel farm to an on-airport site located at Imperial Highway and Sepulveda Boulevard.
- Expansion of air cargo space to approximately 4.8 million square feet.
- Acquisition of approximately 220 acres of land.

Concept 2

- Construction of a new 6,000 foot long runway along the northern border of the airport.
- Relocation to the east and extension of Runways 6L/24R and 6R/24L to lengths of 10,000 and 12,000 feet, respectively.
- Relocation to the south and extension of Runway 7R/25L to 12,000 feet in length.
- Construction of a new 6,000 foot long runway along the southeastern border of the airport.
- Terminal Building Expansion and associated terminal area improvements including adding approximately 131 narrow body equivalent aircraft gates.
- Reduction of ancillary facilities area to approximately 228 acres and relocating the fuel farm to an off-airport site away from residential land uses.
- Expansion of air cargo space to approximately 4.7 million square feet.
- Acquisition of approximately 446 acres of land.

Concept 3

- Construction of a new 6,000 foot long runway along the northwestern border of the airport into the LAX dunes/preserve area.
- Relocation to the east and extension of Runway 6L/24R to a length of 10,000 feet.
- Relocation to the south and extension of Runway 6R/24L to a length of 12,000 feet.

• Relocation to the south and extension of Runway 7R/25L to 12,000 feet in length.

• Construction of a new 6,000 foot long runway along the southeastern border of the airport.

• Terminal Building Expansion and associated terminal area improvements including adding approximately 131 narrow body equivalent aircraft gates.

• Reduction of ancillary facilities area to approximately 228 acres and relocating the fuel farm to an off-airport site away from residential land uses.

• Expansion of air cargo space to approximately 4.7 million square feet.

• Acquisition of approximately 400 acres of land.

Concept 4

• Realignment and extension of the existing runway at Jack Northrop Field/Hawthorne Municipal Airport to 6,000 feet in length to accommodate commuter aircraft operations.

• Relocation to the south and extension of Runway 6L/24R to a length of 10,000 feet.

• Relocation to the south and extension of Runway 6R/24L to a length of 12,000 feet.

• Terminal Building Expansion and associated terminal area improvements including adding approximately 131 narrow body equivalent aircraft gates.

• Reduction of the ancillary facilities area to approximately 228 acres and relocating the fuel farm to an on-airport site located at Imperial Highway and Sepulveda Boulevard.

• Expansion of air cargo space to approximately 4.8 million square feet.

• Acquisition of approximately 500 acres of land.

No Action Alternative

• This alternative does not include any projects that would increase the airport's passenger or airfield capacity, but does include the following minor development items:

• Extension and minor improvements to existing taxiways.

• Remodeling and minor expansion of the existing Tom Bradley International Terminal.

• Construction of additional remote gates/aircraft ramp area on the west side of the airport.

• Minor expansion of public parking lots.

• Minor expansion of air cargo space.

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues are identified. Written comments and suggestions concerning the scope of the EIS/EIR may be mailed to the FAA informational contact listed above and must be received no later than Thursday, July 31, 1997.

Public Scoping Meetings

The FAA will hold three (3) public and one (1) governmental agency scoping meetings to solicit input from the public and various Federal, State and local agencies which have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the proposed projects. The first two public scoping meetings will be held on Saturday, July 12, 1997, at the Proud Bird Restaurant, 11022 Aviation Boulevard, Los Angeles, California 90045. The first meeting will be held from 8:00 am to 12:30 p.m. Pacific Daylight Time (PDT). The second meeting will be held beginning at 2:00 p.m. to 7:00 p.m. (PDT). The third public scoping meeting will be held on Tuesday, July 15, 1997, from 5:00 p.m. to 9:00 p.m. (PDT) at the Hawthorne Memorial Center, 3901 El Segundo Boulevard, Hawthorne, California 90250. A scoping meeting will be held specifically for governmental and public agencies on Wednesday, July 16, 1997, from 9:00 a.m. to 5:00 p.m. (PDT) in the Board Room of the Los Angeles Department of Airports Building, Los Angeles International Airport, 1 World Way, Los Angeles, California 90009.

Issued in Hawthorne, California, on Monday, June 4, 1997.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 97–15306 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–31]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petition received must identify the petition docket number involved and must be received on or before June 30, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comment received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 4, 1997.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 26919.

Petitioner: Kalamazo Aviation History Museum.

Sections of the FAR Affected: 14 CFR 45.25 and 45.29.

Description of Relief Sought/Disposition: To permit the petitioner to operate its Ford Tri-motor, Model No. 5–AT–C, Serial No. 58, with 3 inch-high nationally and registration marks located on each side of the fuselage under the leading edge of the horizontal stabilizer. *Grant, May 20, 1997, Exemption No. 5519B.*

Docket No.: 28094.

Petitioner: American Trans Air.

Sections of the FAR Affected: 14 CFR 121.433 (c)(1)(iii), 121.441(a)(1) and (b)(1) and appendix F to part 121.

Description of Relief Sought/ Disposition: To permit the petitioner to combine recurrent flight and ground training and proficiency checks for ATA's flight crewmembers in a single annual training and proficiency evaluation program. *Grant, May 28, 1997, Exemption No. 6090A.*

Docket No.: 26237.

Petitioner: MCI Systemhouse Corporation.

Sections of the FAR Affected: 14 CFR 91.611.

Description of Relief Sought/ Disposition: To allow petitioner to conduct ferry flights with one engine inoperative in MCI's Falcon Trijet aircraft, Model Nos. 50 and 900, without obtaining a special flight permit for each flight. *Grant, May 27, 1997, Exemption No. 5332C.*

[FR Doc. 97–15171 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at T.F. Green State Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at T.F. Green State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 11, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Elaine Roberts, at the following address: Executive Director of Airports, Rhode Island Aviation Corporation, T.F. Green State Airport, 2000 Post Road, Warwick, Rhode Island, 02886.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Connecticut Department of Transportation under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at T.F. Green State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 105–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 2, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Rhode Island Aviation Corporation was substantially complete within the requirements of § 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than August 6, 1997.

The following is a brief overview of the impose and use application.

PFC Project #: 97–02–C–00–PVD.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2013.

Proposed estimated charge expiration date: May 27, 2014.

Estimated total net PFC revenue: $3,892,980.

Brief description of project: Terminal Leasehold Acquisition.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO), that (1) do not enplane or deplane passengers at the main passenger terminal building; and (2) enplane less than 500 passengers per year at T.F. Green State Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person in the Rhode Island Aviation Corporation, 2000 Post Road, Warwick, Rhode Island.

Issued in Burlington, Massachusetts, on June 4, 1997.

Bradely A. Davis,

Assistant Manager, Airports Division, New England Region.

[FR Doc. 97–15307 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. M–036]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before August 11, 1997.

FOR FURTHER INFORMATION CONTACT: Richard L. Walker, Director, Office of Intermodal Development, Maritime Administration, MAR–810, Room 7209, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–8888 or FAX 202–366–6988. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Inventory of American Intermodal Equipment.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0503.

Expiration Date of Approval: December 31, 1997.

Summary of Collection of Information: The collection consists of an intermodal equipment inventory that provides data essential to both the government and the transportation industry in planning for the most efficient use of intermodal equipment.

Need and Use of the Information: The information contained in the inventory provides data about U.S.-based companies that own or lease intermodal equipment and is essential to both government and industry in planning for contingency operations.

Description of Respondents: The report requests information from U.S.

steamship and intermodal equipment leasing companies.

Annual Responses: 22 companies.

Annual Burden: 66 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, S.W., Washington, D.C. 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: June 15, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–15280 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of public meeting.

The Maritime Administration and United States Transportation Command, with its sealift component Military Sealift Command, announce a public meeting to discuss and provide background information focused primarily to the U.S.-flag tug/barge industry on the advantages of becoming a participant in the Voluntary Intermodal Sealift Agreement (VISA) Program. The meeting will be held in Room 3200–3204, Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590 on June 25, 1997 from 1:00 p.m. to 4:00 p.m.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Raymond R. Barberesi, Director, Office of Sealift Support, (202) 366–2323.

By Order of the Maritime Administrator.

Dated: June 6, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–15279 Filed 6–10–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33405]

Paducah & Louisville Railway—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Paducah & Louisville Railway (P&L) between Madisonville, KY, at or near milepost OOH 275, and the Providence 1 Mine (Mine) located on CSXT's Morganfield Branch, at or near milepost MB 288.8, a distance of approximately 13.5 miles.

The transaction is scheduled to be consummated on June 7, 1997.

The purpose of the trackage rights is to allow P&L to handle movements of coal from the Mine to the generating facilities of Louisville Gas and Electric Company at Kosmosdale and Louisville, KY, and to handle empties via the reverse route.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33405, 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 (1) J. Thomas Garrett, Esq., Paducah & Louisville Railway, 1500 Kentucky Avenue, Paducah, KY 42003, and (2) Fred R. Birkholz, Esq., CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

Decided: June 4, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–15264 Filed 6–10–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') called for the submission of Large Position Reports by those entities whose reportable positions in the 6¼% Treasury Notes of February 2007 equaled or exceeded $2½ billion as of close of business June 6, 1997.

DATES: Large Position Reports must be received before noon Eastern time on June 13, 1997.

ADDRESSES: The reports must be submitted to the Federal Reserve Bank of New York, Market Reports Division, 4th Floor, 33 Liberty Street, New York, New York 10045; or facsimile 212–720–8028.

FOR FURTHER INFORMATION CONTACT: Ken Papaj, Director, or Kerry Lanham, Government Securities Specialist, Bureau of the Public Debt, Department of the Treasury, at 202–219–3632.

SUPPLEMENTARY INFORMATION: Pursuant to the Department's large position rules under the Government Securities Act regulations (17 CFR Part 420), the Treasury, in a press release issued on June 9, 1997, and in this **Federal Register** notice, called for Large Position Reports from those entities whose reportable position in the 6¼% Treasury Notes of February 2007, Series B–2007, equaled or exceeded $2½ billion as of the close of business Friday, June 6, 1997. The call for Large Position Reports is a test. Entities whose reportable positions in this 10-year note equaled or exceeded the $2½ billion threshold must report these positions to the Federal Reserve Bank of New York. Large Position Reports, which must include the required position and administrative information, must be received by the Market Reports Division of the Federal Reserve Bank of New York before noon Eastern time on Friday, June 13, 1997. The Reports may be filed by facsimile at (212) 720–8028 or delivered to the Bank at 33 Liberty Street, 4th floor.

The 6¼% Treasury Notes of February 2007 have a CUSIP number of 912827 2J 0, a STRIPS principal component CUSIP number of 912820 BW 6, and a maturity date of February 15, 2007.

The press release and a copy of this **Federal Register** notice calling for the Large Position Reports, and a copy of a sample Large Position Report which

appears in Appendix B of the rules at 17 CFR Part 420, can be obtained by calling (202) 622–2040 and requesting document number 1737. These documents are also available at the Bureau of the Public Debt's Internet site at the following address: http://www.publicdebt.treas.gov.

Questions about Treasury's large position reporting rules should be directed to Public Debt's Government Securities Regulations Staff at (202) 219–3632. Questions regarding the method of submission of Large Position Reports may be directed to the Market Reports Division of the Federal Reserve Bank of New York at (212) 720–8021.

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1535–0089.

Dated: June 6, 1997.

John D. Hawke, Jr.,

Under Secretary, Domestic Finance.

[FR Doc. 97–15445 Filed 6–9–97; 3:33 pm]

BILLING CODE 4810–39–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

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 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the seven objects (See list [1]), to be exhibited in A Living Memorial to the Holocaust—Museum of Jewish Heritage in New York, imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at A Living Memorial to the Holocaust—Museum of Jewish Heritage in New York from on or about July 1, 1997, through July 1, 2002, 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 the exhibition objects. 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. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Date: June 5, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–15283 Filed 6–10–97; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Jacqueline Caldwell, Assistant General Counsel, at 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Corrections

Federal Register
Vol. 62, No. 112
Wednesday, June 11, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA07

Post-Employment Conflict of Interest Restrictions; Exemption of Positions and Revision of Departmental Component Designations

Correction

In rule document 97–12898, beginning on page 26915, in the issue of Friday, May 16, 1997, make the following corrections:

Appendix A to Part 2641 [Corrected]

1. On page 26917, in the first column, in Appendix A to part 2641, the listing for the Department of Justice should read as follows:

* * * * *

Agency: Department of Justice.
Positions: United States Trustee (21)(effective June 2, 1994).

* * * * *

Appendix B to Part 2641 [Corrected]

2. On page 26917, in the first column, in the eighth line from the bottom, ''anuary'' should read ''January''.
3. On page 26917, in the second column, in footnote 1, in the second line ''Secreary'' should read ''Secretary''.
4. On page 26917, in the second column, in footnote 1, in the sixth line ''Secreary'' should read ''Secretary''.
5. On page 26917, in the second column, in footnote 2, in the first line ''Untied'' should read ''United''.
6. On page 26917, in the second column, in footnote 3, in the first line, ''Untied'' should read ''United''.
7. On page 26917, in the second column, in footnote 3, in the second line ''Attorneys'' should read ''Trustees''.
8. On page 26917, in the third column, in footnote 5, in the first line ''Untied'' should read ''United''.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

5 CFR Part 3801

28 CFR Part 45

RIN 3209-AA15

Supplement Standards of Ethical Conduct for Employees of the Department of Justice

Correction

In rule document 97–11476 beginning on page 23941 in the issue of Friday, May 2, 1997, make the following correction:

§ 3801.106 [Corrected]

On page 23943, in the first column, in the first line of § 3801.106 (b)(1)(ii), ''have as'' should read ''habeas''.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Annual Service Delivery Area Report (JASDA); Comment Request

Correction

In notice document 97–14056 beginning on page 29154 in the issue of Thursday, May 29, 1997, make the following correction:

On page 29154, in the third column, under the **DATES** section ''June 28, 1997'' should read ''July 28, 1997''.

BILLING CODE 1505-01-D

federal register

Wednesday
June 11, 1997

Part II

Federal Communications Commission

47 CFR Parts 61 and 69

Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; Usage of the Public Switched Network by Information Service and Internet Providers; Rules

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[CC Docket Nos. 96–262, 94–1, 91–213, 96–263; FCC 97–158]

Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; Usage of the Public Switched Network by Information Service and Internet Access Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 23, 1996, the Commission adopted a Notice of Proposed Rulemaking in this docket, seeking comment on how the interstate access charge regime should be revised in light of the local competition and Bell Operating Company entry provisions of the Telecommunications Act of 1996 and state actions to open local markets to competition, the effects of potential and actual competition on incumbent LEC pricing for interstate access, and the impact of the Act's mandate to preserve and enhance universal service. In this Report and Order, the Commission adopts many of the rules it proposed. These rule revisions are intended to foster competition, move access charges over time to more economically efficient levels and rate structures, preserve universal service, and lower rates.

DATES: The following rules or amendments thereto, shall become effective July 11, 1997 47 CFR 69.103, 69.107, 69.122, 69.303, 69.304, 69.307, 69.308, and 69.406. The following rules or amendments thereto, which impose new or modified information or collection requirements, shall become effective upon approval by the Office of Management and Budget (OMB), but no sooner than June 15, 1997: 47 CFR 61.45, 61.47, 69.104, 69.126, 69.151, 69.152, and 69.410. The following rules, or amendments thereto, in this Report and Order shall be effective January 1, 1998: 47 CFR 61.3, 61.46, 69.1, 69.2, 69.105, 69.123, 69.124, 69.125, 69.154, 69.155, 69.157, 69.305, 69.306, 69.309, 69.401, 69.411, 69.501, 69.502, and 69.611. The following rules, which impose new or modified information or collection requirements, shall become effective upon approval by the Office of Management and Budget (OMB), but no sooner than January 1, 1998: 47 CFR 61.42, 61.48, 69.4, 69.106, 69.111, 69.153, and 69.156. The Commission will publish a document in the **Federal Register** at a later date announcing the effective date for the sections containing information collection requirements.

FOR FURTHER INFORMATION CONTACT: Richard Lerner, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530. For additional information concerning the information collections contained in this Report and Order contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted May 7, 1997, and released May 16, 1997. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, DC. The complete text also may be obtained through the World Wide Web, http://www.fcc.gov/Bureaus/Common__Carrier/Orders/1997/fcc97158.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., N.W., Suite 140, Washington, DC 20037. To seek comment on the rules adopted in this Report and Order, the Commission released Access Charge Reform, CC Docket No. 96–262, Notice of Proposed Rulemaking, 62 FR 4670 (January 31, 1997); Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94–1, Second Further Notice of Proposed Rulemaking, 60 FR 49539 (September 25, 1995); and Price Cap Performance Review for Local Exchange Carriers, CC Docket 94–1, Fourth Further Notice of Proposed Rulemaking, 60 FR 52362 (October 6, 1995). This Report and Order contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. Please note that the Commission has requested emergency review and approval of this collection by June 10, 1997 under the provisions of 5 CFR 1320.13.

Paperwork Reduction Act

This Report and Order contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Please note that the Commission has requested emergency review and approval of this collection by June 10, 1997 under the provisions of 5 CFR 1320.13. OMB notification of action is due June 10, 1997. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0760.

Title: Access Charge Reform Report and Order.

Form No.: N/A.

Type of Review: Revised Collection.

Respondents: Business and other for profit.

Number of Respondents: 13.

Estimated Time Per Response: 138,714 hours.

Total Annual Burden: 1,803,282 hours.

Estimated costs per respondent: $2,400.

Total Annual Estimated Costs: $31,200.

Needs and Uses: In the Access Charge Reform First Report and Order, the Commission adopts, that, consistent with principles of cost-causation and economic efficiency, non-traffic sensitive (NTS) costs associated with local switching should be recovered on an NTS basis, through flat-rated, per month charges. The information collections resulting from this Report and Order are as follows:

a. *Cost Study of Local Switching Costs:* The FCC does not establish a fixed percentage of local switching costs that incumbent LECs must reassign to the Common Line basket or newly created Trunk Cards and Ports service category as NTS costs. In light of the widely varying estimates in the record, we conclude that the portion of costs that is NTS costs likely varies among LEC switches. Accordingly, we require each price cap LEC to conduct a cost study to determine the geographically-averaged portion of local switching costs that is attributable to the line-side ports, as defined above, and to dedicated trunk side cards and ports. These amounts, including cost support, should be reflected in the access charge

elements filed in the LEC's access tariff effective January 1, 1998.

b. *Cost Study of Interstate Access Service That Remain Subject to Price Cap Regulation:* The 1996 Act has created an unprecedented opportunity for competition to develop in local telephone markets. We recognize, however, that competition is unlikely to develop at the same rate in different locations, and that some services will be subject to increasing competition more rapidly than others. We also recognize, however, that there will be areas and services for which competition may not develop. We will adopt a prescriptive ''backstop'' to our market-based approach that will serve to ensure that all interstate access customers receive the benefits of more efficient prices, even in those places and for those services where competition does not develop quickly. To implement our backstop to market-based access charge reform, we require each incumbent price cap LEC to file a cost study no later than February 8, 2001, demonstrating the cost of providing those interstate access services that remain subject to price cap regulation because they do not face substantial competition.

c. *Tariff Filings.* The Commission also suggests several information collections relating to tariff filings. Specifically, the Commission adopts its proposals to require the filing of various tariffs, with modifications. For example, the FCC directs incumbent LECs to establish separate rate elements for the multiplexing equipment on each side of the tandem switch. LECs must establish a flat-rated charge for the multiplexers on the SWC side of the tandem, imposed pro-rata on the purchasers of the dedicated trunks on the SWC side of the tandem. Multiplexing equipment on the EO side of the tandem shall be charged to users of common EO-to-tandem transport on a per-minute of use basis. These multiplexer rate elements must be included in the LEC access tariff filings to be effective January 1, 1998.

Synopsis of Report and Order

I. Introduction

1. In passing the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (codified at 47 U.S.C. secs. 151 *et seq.*) (1996 Act), Congress sought to establish ''a pro-competitive, deregulatory national policy framework'' for the United States' telecommunications industry. With this Order, we begin the third part in a trilogy of actions collectively intended to foster and accelerate the introduction of competition into all telecommunications markets, pursuant to the mandate of the 1996 Act.

2. In the *Local Competition Order,* we set forth rules to implement section 251 and section 252 of the Communications Act of 1934, as amended. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96–98, First Report and Order, 61 FR 45476 (August 29, 1996) (*Local Competition Order*), Order on Reconsideration, CC Docket No. 96–98, 61 FR 52706 (October 8, 1996), *petition for review pending and partial stay granted, sub nom. Iowa Utils. Bd.* v. *FCC,* 109 F.3d 418 (8th Cir. 1996). As with all of Part II of Title II of the Communications Act, those sections, and the rules implementing them, seek to remove the legal, regulatory, economic, and operational barriers to telecommunications competition. Among other things, sections 251 and 252 provide entrants with the opportunity to compete for consumers in local markets by either constructing new facilities, leasing unbundled network elements, or reselling telecommunication services.

3. In the *Universal Service Order,* which we adopt in a companion order today, we take steps to ensure that support mechanisms that are necessary to maintain local rates at affordable levels are protected and advanced as local telecommunication markets become subject to the competitive pressures unleashed by the 1996 Act. Federal-State Board on Universal Service, CC Docket No. 96–45, First Report and Order, FCC 97–157, _____ FR _____ (released May 8, 1997) (*Universal Service Order*). When it enacted section 254 of the Communications Act, Congress detailed the principles that must guide this effort. It placed on the Commission and the states the duty to implement these principles in a manner consistent with the pro-competition purposes of the Act, as embodied in, for instance, the interconnection provisions of the Act. It stated that ''[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.''

4. Congress also specified that universal service support ''should be explicit,'' and that, with respect to federal universal service support, ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and non-discriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'' As explained further in the Joint Explanatory Statement of the Committee of the Conference, Congress intended that, ''[t]o the extent possible, * * * any support mechanisms continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today.'' Congress directed the Commission, by May 8, 1997, to complete a universal service proceeding that ''include[s] a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation.''

5. Through our accompanying *Universal Service Order,* we establish the definition of services to be supported by federal universal service support mechanisms and the specific timetable for implementation. Further, through this *First Report and Order* in our access reform docket and our *Universal Service Order,* we set in place rules that will identify and convert existing federal universal service support in the interstate high cost fund, the dial equipment minutes (DEM) weighting program, Long Term Support, Lifeline, Link-up, and interstate access charges to explicit federal universal service support mechanisms. As detailed below, we will identify the implicit federal universal service support currently contained in interstate access charges through three methods.

6. First, we will reduce usage-sensitive interstate access charges by phasing out local loop and other non-traffic-sensitive (NTS) costs from those charges and directing incumbent local exchange carriers (LECs) to recover those NTS costs through more economically efficient, flat-rated charges. Because NTS costs, by definition, do not vary with usage, the recovery of NTS costs on a usage basis pursuant to our current access charge rules amounts to an implicit subsidy from high-volume users of interstate toll services to low-volume users of interstate long-distance services.

7. Second, we will rely in part on emerging competition in local telecommunications markets, spurred by the adoption of the 1996 Act, to help identify the differences between the rates for interstate access services established by incumbent LECs under price cap regulation and those that competition would set. The prices for interstate access services offered by competing providers presumably will not contain any implicit universal service support such as that embedded in the incumbent LECs' access charges. Consequently, the introduction of competition inevitably will help to

remove implicit support from the incumbent LECs' access charges where competition develops and also will help to identify the extent of implicit support in other areas.

8. Third, we will engage in further deliberations on a forward-looking economic cost-based mechanism that we will use to distribute federal support to rural, insular, and high cost areas, beginning in 1999. Based on cost studies the states will conduct during the coming year (or, at a state's election, based upon Commission-developed proxy methods), an estimate of the forward-looking economic cost of providing service to a customer in a particular rural, insular, or high cost area will be calculated. We will distribute federal universal service support based on the interstate portion of the difference between forward-looking economic cost and a nationwide revenue benchmark. The amount of the support will be explicitly calculable and identifiable by competing carriers, and the support will be portable among competing carriers, i.e., distributed to the eligible telecommunications carrier chosen by the customer. It will be funded by equitable and non-discriminatory contributions from all carriers that provide interstate telecommunications services. Through this *First Report and Order,* we direct that federal universal service support received by incumbent LECs be used to reduce or satisfy the interstate revenue requirement otherwise collected through interstate access charges. Accordingly, through both our *Universal Service Order* and this *First Report and Order* on access reform, interstate implicit support for universal service will be identified and removed from interstate access charges, and support will be provided through the explicit interstate universal service support mechanisms.

9. Although these three steps will set in motion a process that will remove implicit universal service support from access charges, it will not remove all implicit support from all access charges immediately. This result is fully in accord with Congress's directives. Although Congress said in the Act that ''support should be explicit'', it did not provide that ''support shall be explicit.'' Congress's decision to say ''should'' instead of ''shall'' is especially pertinent in light of Congress's repeated use of ''shall'' in the 1996 Act. Moreover, in the Act's legislative history, Congress qualified its intention that ''support mechanisms should be explicit, rather than implicit,'' with the phrase ''[t]o the extent possible.'' Thus, Congress recognized that the conversion of the existing web of implicit subsidies to a system of explicit support would be a difficult task that probably could not be accomplished immediately. As explained below, we conclude that a process that eliminates implicit subsidies from access charges over time is warranted primarily for three reasons. First, we simply do not have the tools to identify the existing subsidies precisely at this time. Second, we prefer to rely on the market rather than regulation to identify implicit support because we are more confident of the market's ability to do so accurately. Third, even if we were more confident of our ability to identify all of the existing implicit support mechanisms at this time, eliminating them all at once might have an inequitable impact on the incumbent local exchange carriers.

10. Nor, by our orders today, do we attempt to identify or eliminate the implicit universal service support mechanisms established by state commissions. We recognize that states are initially responsible for identifying implicit intrastate subsidies. For the reasons stated above, we believe the Commission has discretion under the statute to employ pro-competitive, deregulatory policies to aid in the reform of the existing, complex system of universal service. Where pro-competition policies, such as those set forth in sections 251, 252 and 253, can force prices for telecommunications services to competitive levels, and, as a result, eliminate or, at least, substantially eliminate implicit support, the Act grants us the authority to rely on such policies over a period of time. We find that the Act does not require, nor did Congress intend, that we immediately institute a vast set of wide-ranging pricing rules applicable to interstate and intrastate services provided by incumbent LECs that would have enormously disruptive effects on both ratepayers as well as the affected LECs. Indeed, the congressional mandate that we implement pro-competitive, deregulatory policies is a continuing reminder that, wherever feasible, we should select competition instead of regulation as our means of accomplishing the stated statutory goals. Reliance on competition is the keystone that unifies our universal service and access reform orders.

11. Nevertheless, implicit intrastate universal service support is substantial. States have maintained low residential basic service rates through, among other things, a combination of: geographic rate averaging, high rates for business customers, high intrastate access rates, high rates for intrastate toll service, and high rates for vertical features and services such as call waiting and call forwarding. By not mandating immediate Commission action to eliminate these policies and instead by ordering that the Commission and the states together achieve universal service goals, Congress intended that states, acting pursuant to section 254(f) of the Communications Act, must in the first instance be responsible for identifying intrastate implicit universal service support. Indeed, by our decisions in this Order and in our companion *Universal Service Order,* we strongly encourage states to take such steps.

12. To achieve the vital, historic, and congressionally-mandated purposes of universal service in every state in an era in which competition replaces monopoly, it is necessary that the states and the Commission develop new and effective mechanisms of complementing the activities of each other. Therefore, as states implement their universal service plans, we will be able to assess whether additional federal universal service support is necessary to ensure that quality services remain ''available at just, reasonable, and affordable rates.'' Our decisions in this Order are meant in part to provide some elements of the plan and time sufficient to discharge responsibly an aspect of the federal role in this federal-state universal service partnership.

13. In this *First Report and Order,* we also take the actions necessary to permit the market, in the first instance, to expose any implicit universal service support that we may fail to identify as we implement our federal mechanisms for supporting universal service in insular, rural, and high cost areas and to drive access rates toward levels that competition would be expected to produce. Our decision also fulfills the congressional intent that we eliminate the rules that have helped to sustain de facto or de jure monopolies in access markets and instead create the conditions for competitive entry on a sustainable, long-term basis. That requires, among other things, that we phase out opportunities for inefficient entry that are created primarily by anomalies in the current, monopoly-oriented regime. Consequently, this Order sets forth a plan for removing distortions and inefficiencies in both the current ''rate structures'' (the term used to describe the manner in which a particular charge is assessed, such as through a per-minute-of-use fee or a flat-rated fee) and ''rate levels'' (the term used to describe the aggregate size of a particular access charge). By rationalizing the access charge rate structure, we ensure that charges more accurately reflect the manner in which

the costs are incurred, thereby facilitating the movement to a competitive market. We also establish, in this *First Report and Order,* a prescriptive mechanism to ensure that, through the operation of price caps and by other means, interstate access charges in areas where competition does not develop will also be driven toward the levels that competition would be expected to produce. The *Price Cap Fourth Report and Order,* which is also the Second Report and Order in this docket and which is also adopted today, modifies the X-Factor in accordance with this plan. Price Cap Performance Review for Local Exchange Carriers, Fourth Report and Order in CC Docket No. 94–1, and Access Charge Reform, Second Report and Order in CC Docket No. 96–262, FCC 97–159, _____ FR _____ (adopted May 7, 1997) (*Price Cap Fourth Report and Order*).

14. In a subsequent order in the present docket, we will provide detailed rules for implementing the market-based approach that we adopt in today's Order. That process will give carriers progressively greater flexibility in setting rates as competition develops, gradually replacing regulation with competition as the primary means of setting prices and facilitating investment decisions. A separate order in this docket will also address ''historical cost'' recovery: whether and to what extent carriers should receive compensation for the recovery of the allocated costs of past investments if competitive market conditions prevent them from recovering such costs in their charges for interstate access services.

15. By our orders today, we reject the arguments made by some parties that section 254 compels us immediately to remove all universal service costs from interstate access charges. Making ''implicit'' universal service subsidies ''explicit'' ''to the extent possible'' means that we have authority at our discretion to craft a phased-in plan that relies in part on prescription and in part on competition to eliminate subsidies in the prices for various products sold in the market for telecommunications services. Moreover, we have met section 254's clear command that we identify the services to be supported by federal universal service support mechanisms and that we establish a specific timetable for implementation. Under that timetable, we will over the next year identify implicit interstate universal support and make that support explicit, as further provided by section 254(e). As with any implicit support mechanism, universal service costs are presently intermingled with all other costs, including the forward-looking economic costs of interstate access and any historic costs associated with the provision of interstate access services. We cannot remove universal service costs from interstate access charges until we can identify those costs, which we will not be able to do even for non-rural LECs before January 1, 1999.

16. Coupled with the modifications implemented in our *Universal Service Order,* the changes we put in place today will provide far-reaching benefits to the American people. This Order will restructure access charges, resulting in lower long-distance rates for many consumers, while substantially increasing the volume of long-distance calling. It will promote the spread of competition by replacing significant implicit subsidies with an explicit and secure universal service support system. It will foster competition and economic prosperity by creating an access charge system that is both efficient and fair. We believe that the changes implemented by this Order are necessary to meet the goal set forth in the 1996 Act—''opening all telecommunications markets to competition.''

A. Background

1. The Existing Rate System

17. For much of this century, most telephone subscribers obtained both local and long-distance services from the same company, the pre-divestiture Bell System, owned and operated by AT&T. Its provision of local and intrastate long-distance services through its wholly-owned operating companies was regulated by state commissions. The Commission regulated AT&T's provision of interstate long-distance service. Much of the telephone plant that is used to provide local telephone service (such as the local loop, the line that connects a subscriber's telephone to the telephone company's switch) is also needed to originate and terminate interstate long-distance calls. Consequently, a portion of the costs of this common plant historically was assigned to the interstate jurisdiction and recovered through the rates that AT&T charged for interstate long-distance calls. The balance of the costs of the common plant was assigned to the intrastate jurisdiction and recovered through the charges administered by the state commissions for intrastate services. The system of allocating costs between the interstate and intrastate jurisdictions is known as the separations process. The difficulties inherent in allocating the costs of facilities that are used for multiple services between the two jurisdictions are discussed below.

18. At first, there was no formal system of tariffed charges to determine how the BOCs and the hundreds of unaffiliated, independent LECs would recover the costs allocated to the interstate jurisdiction by the separations rules. Instead, AT&T remitted to these companies the amounts necessary to recover their allocated interstate costs, including a return on allocated capital investment.

19. In the 1970s, MCI and other interexchange carriers (IXCs) began to provide switched long-distance service in competition with AT&T. However, AT&T still maintained monopolies in the local markets served by its local subsidiaries, the Bell Operating Companies (BOCs). The BOCs owned and operated the telephone wires that connected the customers in their local markets. Other independent (non-Bell) LECs held similar monopoly franchises in their local service areas. MCI and the other IXCs were dependent on the BOCs and the independent LECs to complete the long-distance calls to the end user.

20. For much of the 1970s, MCI and AT&T fought over the fees—the access charges—that MCI should pay the BOCs for originating and terminating interstate calls placed by or to end users on the BOCs' local networks. That battle took place before federal regulators, as well as in the federal courts. In December 1978, under Commission supervision, AT&T, MCI, and the other long-distance competitors entered into a comprehensive interim agreement, known as Exchange Network Facilities for Interstate Access (ENFIA), that set rates that AT&T would charge long-distance competitors for originating and terminating interstate traffic over the facilities of its local exchange affiliates. Several years afterwards, AT&T's divestiture was completed, separating the local exchange operations of the BOCs from the rest of AT&T's operations, including AT&T's long distance business. The BOCs maintained monopoly franchises in their local market, but by splitting them off from AT&T's long-distance business, the federal courts removed an incentive for the BOCs to favor AT&T's long distance business over its competitors. Now AT&T competed directly with MCI and the other competitors to provide interstate service, and all of the competitors paid the BOCs for the service of providing the necessary access to end users.

21. In 1978, the Commission commenced a wide-ranging review of the system by which LECs were compensated for originating and

terminating interstate traffic. In 1983, following the decision to break-up AT&T, the Commission adopted uniform access charge rules in lieu of earlier agreements. MTS and WATS Market Structure, Third Report and Order, CC Docket No. 78–72, Phase 1, 48 FR 10319 (March 11, 1983) (*MTS and WATS Market Structure Third Report and Order), recon.,* 48 FR 42984 (September 21, 1983), *second recon.,* 49 FR 7810 (March 2, 1984). These rules governed the provision of interstate access services by all incumbent LECs, BOCs as well as independents. The access charge rules provide for the recovery of the incumbent LECs' costs assigned to the interstate jurisdiction by the separations rules.

22. The Commission uses a multi-step process to identify the cost of providing access service. First, the rules require an incumbent LEC to record all of its expenses, investments, and revenues in accordance with accounting rules set forth in our regulations. Second, the rules divide these costs between those associated with regulated telecommunications services and those associated with nonregulated activities. Third, the separations rules determine the fraction of the incumbent LEC's regulated expenses and investment that should be allocated to the interstate jurisdiction. After the total amount of interstate cost is identified, the access charge rules translate these interstate costs into charges for the specific interstate access services and rate elements. Part 69 specifies in detail the rate structure for recovering those costs. That is, the rules tell the incumbent LECs the precise manner in which they may assess charges on interexchange carriers and end users.

23. Determining the costs that an incumbent LEC incurs to provide interstate access services and that, consequently, should be recovered from those services, is relatively straightforward in some cases and problematic in others. Some facilities, such as private lines, can be used exclusively for interstate services and, in such cases, the entire cost of those facilities is assigned to the interstate jurisdiction by the separations rules. Most facilities, however, are used for both intrastate and interstate services. The costs of some of these facilities vary depending on the amount of telecommunications traffic that they handle. The separations rules typically assign these traffic-sensitive (TS) costs on the basis of the relative interstate and intrastate usage of the facilities, as measured, for example, by the relative minutes of interstate and intrastate traffic carried by such facilities. By contrast, the costs of other facilities used for both interstate and intrastate traffic do not vary with the amount of traffic carried over the facilities, i.e., the costs are non-traffic-sensitive. These costs pose particularly difficult problems for the separations process: The costs of such facilities cannot be allocated on the basis of cost-causation principles because all of the facilities would be required even if they were used only to provide local service or only to provide interstate access services. A significant illustration of this problem is allocating the cost of the local loop, which is needed both to provide local telephone service as well as to originate and terminate long-distance calls. The current separations rules allocate 25 percent of the cost of the local loop to the interstate jurisdiction for recovery through interstate charges. The general process of separating these costs between the interstate and intrastate jurisdictions is discussed by the Supreme Court in *Smith* v. *Illinois Bell Tel. Co.,* 282 U.S. 133 (1930).

24. The Commission has recognized in prior rulemaking proceedings that, to the extent possible, costs of interstate access should be recovered in the same way that they are incurred, consistent with principles of cost-causation. Thus, the cost of traffic-sensitive access services should be recovered through corresponding per-minute access rates. Similarly, NTS costs should be recovered through fixed, flat-rated fees. The Commission, however, has not always adopted rules that are consistent with this goal. In particular, the Commission limited the amount of the allocated interstate cost of a local loop that is assessed to residential and business customers as a flat monthly charge, because of concerns that allowing the flat charges to rise above the specified limits might cause customers to disconnect their telephone service. The residual cost of the loop not recovered from end users through the flat charge is recovered through a per-minute-of-use charge assessed to long-distance carriers.

25. Through the end of 1990, the vast majority of access revenues were governed by ''cost-of-service'' regulation. Under cost-of-service regulation, incumbent LECs calculate the specific access charge rates using projected costs and projected demand for access services. Thus, for example, if an incumbent LEC projects that it will provide 10,000 total minutes of switching for interstate calls and estimates that it must generate $1,000 dollars in revenue in order to recover the costs of switching that are allocated to the interstate jurisdiction by the separations rules, the access charge for local switching would be set at $0.10 per minute ($1,000/10,000 minutes). In 1991, however, we implemented a system of price cap regulation that altered the manner in which the largest incumbent LECs established their interstate access charges. While most rural and small LECs remained subject to all of the Part 69 cost-of-service rules, generally the largest incumbent LECs are now subject to price cap regulations set forth in Part 61 of our rules.

26. Price cap regulation fundamentally alters the process by which incumbent LECs determine the revenues they are permitted to obtain from interstate access charges for access services. Briefly stated, cost-of-service regulation is designed to limit the profits an incumbent LEC may earn from interstate access service, whereas price cap regulation focuses primarily on the prices that an incumbent LEC may charge and the revenues it may generate from interstate access services. Under the Part 69 cost-of-service rules, revenue requirements are based on embedded or accounting costs allocated to individual services. Incumbent LECs are limited to earning a prescribed return on investment and are potentially obligated to provide refunds if their interstate rate of return exceeds the authorized level. By contrast, although the access charges of price cap LECs originally were set at the cost-of-service levels that existed at the time they entered price caps, their prices have been limited ever since by price indices that have been adjusted annually pursuant to formulae set forth in our Part 61 rules. Price cap carriers whose interstate access charges are set by these pricing rules are permitted to earn returns significantly higher than the prescribed rate of return that incumbent LECs are allowed to earn under cost-of-service rules. Price cap regulation encourages incumbent LECs to improve their efficiency by harnessing profit-making incentives to reduce costs, invest efficiently in new plant and facilities, and develop and deploy innovative service offerings, while setting price ceilings at reasonable levels. In this way, price caps act as a transitional regulatory scheme until the advent of actual competition makes price cap regulation unnecessary. Price Cap Performance Review for Local Exchange Carriers, Second Further Notice of Proposed Rulemaking in CC Docket No. 93–124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93–197, 60 FR 49539

(September 26, 1995) (*Price Cap Second Further NPRM*).

27. Although price cap regulation eliminates the direct link between changes in allocated accounting costs and change in prices, it does not sever the connection between accounting costs and prices entirely. The overall interstate revenue levels still generally reflect the accounting and cost allocation rules used to develop access rates to which the price cap formulae were originally applied. Price cap indices are adjusted upwards if a price cap carrier earns returns below a specified level in a given year. Moreover, a price cap LEC may petition the Commission to set its rates above the levels permitted by the price cap indices based on a showing that the authorized rate levels will produce earnings that are so low as to be confiscatory. In the past, all or some price cap LECs were required to ''share,'' or return to ratepayers, earnings above specified levels. The new rules adopted in the companion *Price Cap Fourth Report and Order* remove this limit on the maximum returns that can be earned by price cap incumbent LECs.

2. Implicit Subsidies in the Existing System

28. Both our price cap and cost-of-service rules contain requirements that inevitably result in charges to certain end users that exceed the cost of the service they receive. To the extent these rates do not reflect the underlying cost of providing access service, they could be said to embody an implicit subsidy. Some of these subsidies are due to the rate structures prescribed by our rules, which in some cases prevent incumbent LECs from recovering their access costs in the same way they have been incurred. For example, although the cost of the local loop that connects an end user to the telephone company's switch does not vary with usage, the current rate structure rules require incumbent LECs to recover a large portion of these non-traffic-sensitive costs through traffic-sensitive, per-minute charges. These mandatory recovery rules inflate traffic-sensitive usage charges and reduce charges for connection to the network, in essence creating an implicit support flow from end users that make many interstate long-distance calls to end users that make few or no interstate long-distance calls.

29. Several Federal-State Joint Boards have observed that additional subsidies and distortions may be due, not only to the rate structure, but to the separations rules that divide costs between the interstate and intrastate jurisdictions. For example, the current separations rules require larger incumbent LECs to allocate the costs of their switching facilities between the interstate and intrastate jurisdictions on the basis of relative use (i.e., if 30 percent of the minutes of use handled by the LEC's switching facilities are interstate long-distance calls, 30 percent of the LEC's switching costs are allocated to the interstate jurisdiction and recovered through interstate access charges). Our rules, however, permit smaller incumbent LECs to allocate a greater share of their switching costs to interstate access services than would result from the relative use allocator. These smaller incumbent LECs multiply the interstate use ratio by a factor (as high as 3) specified in the separations rules. In its *Recommended Decision,* the Joint Board on Universal Service observed that these separations rules ''shift what would otherwise be intrastate costs to the interstate jurisdiction,'' thereby allowing such LECs to charge lower prices for intrastate services. Federal-State Joint Board on Universal Service, CC Docket No. 96–45, Recommended Decision, 61 FR 63778 (December 2, 1996) (*Joint Board Recommended Decision*). The Joint Board found that this allocation structure, known as DEM (dial equipment minute) weighting, is ''an implicit support mechanism that is recovered through the switched access rates charged to interexchange carriers by those carriers serving less than 50,000 lines.'' *Joint Board Recommended Decision.* Similarly, in the *Marketing Expense Recommended Decision,* another Federal-State Joint Board observed that the separations rules allocate a share of the incumbent LECs' retail marketing expenses to the interstate jurisdiction that is unreasonably high, given that the interstate access services consist primarily of wholesale service offerings. Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, CC Docket No. 86–297, Recommended Decision and Order, 52 FR 15355 (April 28, 1987) (*Marketing Expense Recommended Decision*). To the extent these and other separation rules do not apportion costs between the jurisdictions in a manner that reflects the costs incurred to provide service in each jurisdiction, they might be viewed as generating subsidies from the interstate to the intrastate jurisdiction. These subsidies effectively require incumbent LECs to charge higher rates for interstate services and lower rates for intrastate services than would otherwise occur if the subsidies were eliminated.

30. This ''patchwork quilt of implicit and explicit subsidies'' generates inefficient and undesirable economic behavior. For example, a rate structure that requires the use of per-minute access charges where flat-rated fees would be more appropriate increases the per-minute rates paid by IXCs and long-distance consumers, thus artificially suppressing demand for interstate long-distance services. Similarly, the possible overallocation of costs to the interstate jurisdiction may, for some consumers, increase long-distance rates substantially, suppressing their demand for interstate interexchange services. Implicit subsidies also have a disruptive effect on competition, impeding the efficient development of competition in both the local and long-distance markets. For example, where rates are significantly above cost, consumers may choose to bypass the incumbent LEC's switched access network, even if the LEC is the most efficient provider. Conversely, where rates are subsidized (as in the case of consumers in high-cost areas), rates will be set too low and an otherwise efficient provider would have no incentive to enter the market. In either case, the total cost of telecommunications services will not be as low as it would otherwise be in a competitive market. Because of the growing importance of the telecommunications industry to the economy as a whole, this inefficient system of access charges retards job creation and economic growth in the nation.

31. Despite the existence of distortions and inefficiencies, the current system of cross-subsidies has persisted for over a decade. The structure has been justified on policy grounds, principally as a means to serve universal service goals. By providing incumbent LECs with a stream of subsidized revenues from certain customers, the system allows regulators to demand below-cost rates for other customers, such as those in high-cost areas.

3. The Telecommunications Act of 1996

32. The existing system of implicit subsidies and support flows is sustainable only in a monopoly environment in which incumbent LECs are guaranteed an opportunity to earn returns from certain services and customers that are sufficient to support the high cost of providing other services to other customers. The new competitive environment envisioned by the 1996 Act threatens to undermine this structure over the long run. The 1996 Act removes barriers to entry in

the local market, generating competitive pressures that make it difficult for incumbent LECs to maintain access charges above economic cost. For example, by giving competitors the right to lease an incumbent LEC's unbundled network elements at cost, Congress provided IXCs an alternative avenue to connect to and share the local network. Thus, where existing rules require an incumbent LEC to set access charges above cost for a high-volume user, a competing provider of exchange access services entering into a market can lease unbundled network elements at cost, or construct new facilities, to circumvent the access charge. In Section VI.A of this Order, we conclude that access charges may not be assessed on unbundled network elements since they are not part of the ''cost'' of providing those elements, as defined in 47 U.S.C. sec. 252(d)(1)(A)(i). In this way, a new entrant might target an incumbent LEC's high-volume access customers, for whom access charges are now set at levels significantly above economic cost. As competition develops, incumbent LECs may be forced to lower their access charges or lose market share, in either case jeopardizing the source of revenue that, in the past, has permitted the incumbent LEC to offer service to other customers, particularly those in high-cost areas, at below-cost prices. Incumbent LECs have for some time been claiming that this process has already made more than trivial inroads on their high-volume customer base.

33. Recognizing the vulnerability of implicit subsidies to competition, Congress directed the Commission and the states to take the necessary steps to create permanent universal service mechanisms that would be secure in a competitive environment. To achieve this end, Congress directed the Commission to strive to replace the system of implicit subsidies with ''explicit and sufficient'' support mechanisms. In calling for explicit mechanisms, Congress did not intend simply to require carriers to identify and disclose the implicit subsidies that currently exist in the industry. Rather, as we determine in the *Universal Service Order* adopted today, Congress intended to establish subsidies that were both ''measurable'' and ''portable''—''measurable'' in a way that allows competitors to assess the profitability of serving subsidized end users; and ''portable'' in a way that ensures that competitors who succeed in winning a customer also win the corresponding subsidy. A system of portable and measurable subsidies will permit carriers to compete for the subsidies associated with high-cost or low-income consumers. In the long run, this approach may even allow us to set subsidy levels through competitive bidding rather than through regulation. By contrast, under the current system of implicit subsidies, the only carriers that will serve high-cost consumers are those that are required to do so by regulation and that are able (because of their protected monopoly positions) to charge above-cost rates to other end users.

34. In the *Universal Service Order*, we establish ''explicit and sufficient'' support mechanisms to assist users in high-cost areas, low-income consumers, schools, and health care providers. By creating explicit support mechanisms, we establish a system to advance the universal service goals of the 1996 Act that is compatible with the development of competition in the local exchange and exchange access markets. By creating a portable and measurable system of subsidies, we utilize the power of the market to serve universal service goals more efficiently. That order, in short, guarantees that Congress's universal service goals are met in a way that conforms with the pro-competitive and deregulatory goals of the 1996 Act.

B. Access Charge Reform

35. In light of Congress's command to create secure and explicit mechanisms to achieve universal service goals, we conclude that implicit subsidies embodied in the existing system of interstate access charges cannot be indefinitely maintained in their current form. In this Order, therefore, we take two steps with respect to the rules governing the interstate access charges of price cap incumbent LECs. First, we reform the current rate structure to bring it into line with cost-causation principles, phasing out significant implicit subsidies. Second, we set in place a process to move the baseline rate level toward competitive levels. Together with the *Universal Service Order*, these adjustments will promote the public welfare by encouraging investment and efficient competition, while establishing a secure structure for achieving the universal service goals established by law. Further, the process we set in place to achieve these goals avoids the destabilizing effects of sudden radical change, facilitating the transformation from a regulated to a competitive marketplace. With the limited exceptions identified in Section V, the scope of this proceeding is limited to price cap incumbent LECs. As we explain in that section, the need for access reform is most immediate for these carriers, since they are most vulnerable to competition from interconnection and the availability of unbundled network elements. This proceeding will affect the vast majority of all access lines and revenues, because price cap regulation governs more than 90 percent of all incumbent LEC access lines. We will initiate a separate proceeding later this year to examine the special circumstances of small and rural rate-of-return LECs.

1. Rationalizing the Rate Structure

36. In this Order, we reshape the existing rate structure in order to eliminate significant implicit subsidies in the access charge system. To achieve that end, we make several modifications to ensure that costs are recovered in the same way that they are incurred. In general, NTS costs incurred to serve a particular customer should be recovered through flat fees, while traffic-sensitive costs should be recovered through usage-based rates. The present structure violates this basic principle of cost causation by requiring incumbent LECs to recover many fixed costs through variable, per-minute access rates. An important goal of this Order is to increase the amount of fixed costs recovered through flat charges and decrease the amount recovered through variable rates.

37. *Common Line Costs.* Because the costs of using the incumbent LEC's common line (or ''local loop'') do not increase with usage, these costs should be recovered through flat, non-traffic-sensitive fees. The current rate structure, however, generally allows an incumbent LEC to recover no more than a portion of its interstate common line revenues through a flat-rated Subscriber Line Charge (SLC), which is capped at $3.50 per month for residential and single-line business users, and $6.00 per month for multi-line users. The remaining common line revenues must be recovered through a per-minute Common Carrier Line (CCL) charge assessed on IXCs (which, in turn, may recover these charges through their prices to long-distance customers). In order to align the rate structure more closely with the manner in which costs are incurred, we adjust access rates over time until the common line revenues of all price cap LECs are recovered through flat-rated charges.

38. For primary residential and single-line business lines, however, we decline to implement this goal by increasing the SLC ceiling above its existing $3.50 level as urged by many companies, including price cap LECs and IXCs. We do not wish to see increases in the price of basic dial tone charged by local exchange carriers to their end users for

fear that such increases might cause some consumers to discontinue service, a result that would be contrary to our mandate to ensure universal service. We agree with the Joint Board's finding that increasing the SLC ceiling may make telecommunications service unaffordable for some consumers. Consequently, to the extent that common line revenues are not recovered through the customer's SLC, we conclude that LECs should recover these revenues through a flat, per-line charge assessed on the IXC to whom the access line is presubscribed—the presubscribed interexchange carrier charge, or PICC. Where an end user does not select a presubscribed interexchange carrier, we allow an incumbent LEC to collect this charge directly from the end user. Further, in order to provide IXCs with the opportunity to incorporate these changes into their business plans, we set the PICC for primary residential and single-line business lines at not more than the existing flat-rated line charges for the first year, and we gradually increase the ceiling thereafter until it reaches a level that permits full recovery of the common line revenues from flat charges assessed to both end users and IXCs. To the extent that the PICC ceiling prevents full recovery of average per-line common line revenues for primary residential and single-line business lines, the residual amount will be recovered through the PICC imposed upon non-primary residential and multi-line business lines. As described in Section III.A below, as the PICC associated with primary residential and single-line business lines increases, the amount of common line revenues associated with those lines that is recovered through the PICC imposed upon non-primary residential and multi-line business lines will fall to zero.

39. For non-primary residential and multi-line business lines, we conclude that affordability concerns do not require us to retain the current ceiling on the monthly SLC. Consequently, we raise the SLC ceiling for these lines to the level that permits incumbent LECs full recovery for their common line revenues, but never more than $3.00 above the current SLC ceiling for multi-line business lines today, adjusted for inflation. The $3.00 increase in the SLC cap for these lines is measured on a per-month basis. Almost all subscribers will pay SLCs below, and often substantially below, the ceiling. The increase in the SLC ceiling for multi-line businesses will be implemented in the first year. To ameliorate the impact that a dramatic increase in the SLC ceiling might have on residential customers, however, the increase for non-primary residential lines will be phased in over time. The data indicate that raising the SLC ceiling to this level will permit incumbent price cap LECs to recover their average common line revenues from 99 percent of their non-primary residential and multi-line business lines. For the remaining lines, many of which are located in rural areas, the SLC ceiling for non-primary residential and multi-line business lines will ensure that end-user charges are not prohibitive or significantly above the national average, thereby advancing universal service goals of affordability and access. We have also taken account of concerns raised by rural carriers and consumers groups that the increase in the SLC for non-primary residential lines and multi-lines could lead to substantial price increases in rural areas. Consequently, we are adopting these changes only for price cap incumbent LECs and will review rate structure modifications affecting small, rural carriers in a separate proceeding.

40. In summary, the plan we adopt here phases out significant implicit subsidies in the access charge rate structure, while taking into account universal service concerns of affordability and access. The resulting rate structure is more closely aligned with cost principles. Under this plan, most price cap incumbent LECs will recover their interstate common line revenues through flat-rated SLCs and PICCs.

41. *Switching and Transport Charges*. Following the same pricing principle that flat charges should recover fixed costs and variable charges should recover variable costs, we make several modifications to the rate structure for switching and transport services. Among other things, we move the cost of line-side ports to the common line and require their recovery through flat-rated charges. To the extent permitted by the record, we also direct incumbent LECs to reassign costs in the Transport Interconnection Charge (TIC) in order to comply with principles of cost causation and the D.C. Circuit's recent decision in *CompTel* v. *FCC*, 87 F.3d 522 (D.C. Cir. 1996).

2. Baseline Rate Level Reductions

42. The rate structure changes that we implement in this Order eliminate some of the distortions that have characterized the access charge system for over a decade. These changes, however, are not alone sufficient to create a system that accurately reflects the true cost of service in all respects. To fulfill Congress's pro-competitive mandate, access charges should ultimately reflect rates that would exist in a competitive market. We recognize that competitive markets are far better than regulatory agencies at allocating resources and services efficiently for the maximum benefit of consumers. We conclude, consequently, that competition or, in the event that competition fails to develop, rates that approximate the prices that a competitive market would produce, best serve the public interest.

43. The rate restructuring we implement in this Order results in substantial reductions in the charges for usage-rated interstate access services. These reductions move these access charges a long way towards their forward-looking cost levels. Furthermore, in addition to these rate structure adjustments, we also take several steps in this Order to address specific cost misallocations that cause access charges to be set above economic costs. For example, we require incumbent LECs to make an exogenous cost adjustment to reflect the full amortization of certain equal access costs. We also issue a Further Notice of Proposed Rulemaking to consider our tentative conclusion that certain General Support Facility (GSF) costs should be reallocated to detariffed services.

44. We recognize that the prescriptive measures that we implement today represent the first step toward our goal of removing implicit universal service subsidies from interstate access charges and moving such charges toward economically efficient levels. In the NPRM, we identified two separate ways to continue this process in the future—a prescriptive approach in which we actively set rates at economic cost levels, and a market-based approach that relies on competition itself to drive access charges down to forward-looking costs. We conclude in this Order, based on our experience in exchange access and other telecommunications markets and the record in this proceeding, that a market-based approach to reducing interstate access charges will, in most cases, better serve the public interest. Although the Commission has considerable expertise in regulating telecommunications providers and services efficiently for the maximum benefit of consumers, we believe that emerging competition will provide a more accurate means of identifying implicit subsidies and moving access prices to economically sustainable levels. Further, as discussed above, we believe that this approach is most consistent with the pro-competitive, deregulatory policy contemplated by the 1996 Act. Accordingly, where

competition is developing, it should be relied upon in the first instance to protect consumers and the public interest.

45. We acknowledge that a market-based approach under this scenario may take several years to drive costs to competitive levels. We also recognize that several commenters have urged us to move immediately to forward-looking rates by prescriptive measures utilizing forward-looking cost models. We decline to follow that suggestion for several reasons. First, as a practical matter, accurate forward-looking cost models are not available at the present time to determine the economic cost of providing access service. Because of the existence of significant joint and common costs, the development of reliable cost models may take a year or more to complete. This situation might be contrasted with that addressed in our *Local Competition Order,* where we endorsed the use of cost models to estimate the cost of providing unbundled network elements. There, we observed that unbundled elements have few joint and common costs, so that devising accurate cost models for unbundled network elements is more straightforward.

46. In addition, even assuming that accurate forward-looking cost models were available, we are concerned that any attempt to move immediately to competitive prices for the remaining services would require dramatic cuts in access charges for some carriers. Such an action could result in a substantial decrease in revenue for incumbent LECs, which could prove highly disruptive to business operations, even when new explicit universal support mechanisms are taken into account. Moreover, lacking the tools for making accurate prescriptions, precipitous action could lead to significant errors in the level of access charge reductions necessary to reach competitive levels. That would further impede the development of competition in the local markets and disrupt existing services. Consequently, we strongly prefer to rely on the competitive pressures unleashed by the 1996 Act to make the necessary reductions.

47. To the extent that some commenters contend that the immediate elimination of all implicit subsidies is mandated by the 1996 Act, we disagree. Neither in the 1996 Act nor its legislative history did Congress state that all forms of implicit universal service support shall be made explicit by May 8, 1997. To the contrary, Congress stated that the conversion of implicit subsidies to explicit support is a goal that ''should be'' pursued ''[t]o the extent possible.'' Congress most certainly did not state that we must reach that goal by May 8, 1997. Rather, it directed that, by that date, we issue rules that ''shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation.'' Our companion order satisfies that timetable, and this Order establishes a process that will eliminate some implicit subsidies quickly and more gradually eliminate others.

48. We are confident that the pro-competitive regime created by the Act and implemented in the *Local Competition Order* and numerous state decisions will generate workable competition over the next several years in many cases, and we would then expect that access price levels to be driven to competitive levels. We also recognize, however, that competition may develop at different rates in different places and that some services may prove resistant to competition. Where competition has not emerged, we reserve the right to adjust rates in the future to bring them into line with forward-looking costs. To assist us in that effort, we will require price cap LECs to submit forward-looking cost studies of their services no later than February 8, 2001, and sooner if we determine that competition is not developing sufficiently for the market-based approach to work. We anticipate that the tools needed to complete these cost studies will be available soon, well before this deadline. Indeed, our *Universal Service Order* requires comparable cost models to be ready by 1998. We will then review competitive conditions and the submitted cost studies.

49. As we acknowledged in the NPRM, a market-based approach will permit and, indeed, require us progressively to deregulate the access charge regime as competition develops. In a subsequent order, we will examine specific issues concerning the timing and degrees of pricing flexibility. That order will identify the competitive triggers that must be met to justify relaxation of specific regulatory constraints. We also recognize the need to examine whether incumbent LECs should be compensated for any historical costs that they have no reasonable opportunity to recover as a result of the transformation from a regulated to competitive marketplace. We recognize that this issue may raise difficult questions of both law and equity, and we intend to respond fully to concerns about historical cost recovery in a subsequent order to be issued this year.

50. Finally, we adopt in this Order our earlier tentative conclusion that incumbent LECs may not assess interstate access charges on information service providers (ISPs). We find that our existing policy promotes the development of the information services industry, advances the goals of the 1996 Act, and creates significant benefits for the economy and the American people. With respect to second and additional residential lines, which are often used by consumers to access ISPs, our goal is to move towards price levels and structures that reflect underlying costs, and thereby to create a neutral market environment in which these lines neither give nor receive subsidies. We will address fundamental questions concerning ISP usage of the public switched network as part of a broader set of issues under review in a related *Notice of Inquiry. See* Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96–263, Notice of Inquiry, 62 FR 4670 (January 31, 1997).

51. Section II of this Order provides an overview of the rate structure adjustments adopted today. Section III offers detailed explanations of these changes, which include adjustments to the rate structure for the common line, local switching, transport, SS7, and switching, and modifications to the TIC. In Section IV, we adopt a market-based approach to reducing access charges and address several specific rate level adjustments. In Section V, we determine which of the changes adopted in this Order should apply to rate-of-return LECs.

52. Section VI touches upon several additional issues, including the applicability of access charges to unbundled network elements, our treatment of terminating access, and ISPs. We also discuss modifications that may be needed to reconcile our access charge rules with the *Universal Service Order* released today. In Section VII, we issue an FNPRM to seek comment on proposals to alter the current allocation of GSF costs and to allow incumbent LECs to impose a PICC on special access lines.

II. Summary of Rate Structure Changes and Transitions

53. In rationalizing the switched access rate structure in this Order, our primary goal is to ensure that traffic-sensitive costs are recovered through traffic-sensitive charges and NTS costs are recovered through flat-rated charges, wherever appropriate. Because many NTS costs are currently recovered through per-minute charges, the

principal effect of our Order is to reduce the amount recovered through per-minute interstate access charges and increase the amounts recovered through flat-rated charges. We phase in these changes over time to ameliorate any disruptions these adjustments might cause end users.

A. Common Line Rate Structure Changes

54. Because the cost of using the incumbent LEC's common line does not increase with usage, the costs should be recovered through flat non-traffic-sensitive fees. In this Order we increase the amount of common line revenues recovered through flat-rated charges over time until incumbent LECs can recover all of their interstate common lines revenues through NTS fees.

55. *Primary Residential and Single-Line Business Lines.* We agree with the Federal-State Joint Board on Universal Service that the SLC ceiling for primary residential and single-line business lines should not be increased, because a higher SLC could make telecommunications service unaffordable for some consumers. To the extent common line revenues cannot be recovered through the customer's existing SLC, we conclude that LECs should recover these revenues through a flat, per-line charge (the ''primary interexchange carrier charge'' or ''PICC'') assessed, not on the end user, but on the end user's presubscribed interexchange carrier. Where an end user does not select a presubscribed interexchange carrier, we allow a price cap LEC to collect this charge directly from the end user. We set a ceiling on the PICC at the level of existing per-line charges for the first year.

56. In order to give IXCs an opportunity to adjust to the new charge, we gradually increase the PICC ceiling over the next several years until it reaches a level that permits full recovery of common line revenues—plus a portion of ''residual TIC'' revenues. To the extent that the ceiling on the primary residential and single-line business PICC does not allow for full recovery of these common line revenues immediately, the remaining revenues will be recovered through a PICC imposed upon non-primary residential and multi-line business lines, and through per-minute charges.

57. As the PICC ceiling for primary residential and single-line business lines increases, the amount of common line revenues transferred to non-primary residential and multi-line business lines will fall to zero. At that point, all common line costs for primary residential and single-line business lines will be recovered through flat-charges on those lines.

58. *Non-Primary Residential and Multi-Line Business Lines.* Because affordability concerns are not as significant for these lines, we permit a modest increase in the SLC to permit recovery of the price cap LEC's average per-line common line revenues, but never to more than $3.00 above the SLC ceiling for multi-line business lines today, adjusted for inflation. To ameliorate the impact that an increase in the SLC might have on residential customers, the increase in the SLC ceiling will be phased in for non-primary residential lines over several years.

59. We also establish a flat-rated PICC on non-primary residential and multi-line business lines. This PICC will cover common line revenues that exceed the ceilings on SLCs and primary residential PICCs. It may also recover some residual TIC revenues and certain marketing expenses, as discussed below. We set a ceiling on this PICC in the first year of $1.50 for non-primary residential lines and $2.75 for multi-line business lines, and permit those ceilings to increase gradually thereafter. We anticipate that the actual PICC imposed upon multi-line business lines will, on average, decrease from 1998 to 1999, and for every year thereafter, and will fall to less than $1.00 by 2001.

60. To the extent that the ceilings on SLCs and PICCs do not allow recovery through flat charges of all common line revenues, LECs shall be permitted to impose a per-minute CCL charge assessed on originating minutes. To the extent that the sum of a LEC's originating local switching charge and any residual per-minute CCL, TIC, and marketing expense charges exceeds the sum of its originating local switching, CCL, and TIC charges on December 31, 1997, the excess shall be collected through a per-minute charge on terminating access. We expect that this will only apply to a few LECs, and to none beyond 1998. As the PICC cap for non-primary residential and multi-line business lines increases—and as revenues transferred from primary residential and single-line businesses fall to zero—the per-minute CCL charge will fall to zero, too. Eventually, we anticipate that most, if not all, price cap LECs will be able to recover the full per-line revenues associated with non-primary residential and multi-line business lines through the SLC, after taking into account the assistance provided through the explicit high-cost universal service support mechanisms. In addition, residual TIC revenues will also be recovered through the PICC on non-primary residential and multi-line business lines. As described more fully below, to the extent that the PICC ceilings prevent full recovery of the residual TIC, the remaining amount will be recovered through a per-minute residual TIC.

B. Other Rate Structure Changes

61. *Switching.* The traffic-sensitive costs of local switching will continue to be recovered through per-minute local switching charges.

62. For price cap LECs, the NTS costs associated with line ports will no longer be included in the local switching charge, and instead will be recovered through the flat-rated common line charges discussed above. Price cap LECs will also assess a monthly flat-rated charge directly on end users that are subscribing to integrated services digital network services, digital subscriber line, or other services that have higher line port costs than basic, analog service. This charge recovers the amount by which the cost of the line port exceeds the cost of a line port for basic, analog service. Costs of local switching attributable to trunk ports are moved to a separate service category within the traffic-sensitive basket. These costs will be recovered through flat-rated monthly charges collected from users of dedicated trunk ports and per-minute, traffic-sensitive charges assessed on users of shared trunk ports. The new rate structure also includes an optional call set-up charge.

63. *Transport.* Effective July 1, 1998, the unitary rate structure option for tandem-switched transmission is eliminated and the costs of tandem-switched transmission must be recovered through the existing three-part rate structure. For price cap LECs, a new flat-rated monthly charge recovers the NTS costs of tandem switching attributable to dedicated ports. A new per-minute rate element recovers the costs of multiplexers used between tandem switch DS–1 port interfaces and the DS–3 circuits used to transport traffic from tandem to end offices. For all incumbent LECs, the formula used to compute the tandem-switched transport rate is based on actual usage of the circuit, rather than an assumed 9000 minutes of use per month.

64. For all incumbent LECs, certain costs currently recovered through the TIC are reassigned to specified facilities charges, including tandem-switching rates. For price cap LECs, those costs of the TIC that remain (the ''residual TIC'') are recovered through the PICC. To the extent that the PICC ceiling prevents recovery of the entire residual TIC

through the flat-rated PICC, the remaining portion will be collected through a per-minute residual TIC. As the ceilings on the PICCs increase, a larger percentage of the residual TIC will be recovered through the PICC. Beginning in July 1997, price cap reductions will be targeted to the per-minute residual TIC until it is eliminated. We expect that the per-minute TIC charge will be eliminated in two to three years. Residual per-minute TICs shall be assessed only on incumbent LEC transport customers, and therefore shall no longer be assessed on competitive access providers (CAPs) that interconnect with the LEC switched network at the end office.

65. *SS7 Signalling.* Price cap LECs may, but are not required to, adopt a rate structure for SS7 signalling that unbundles SS7 signalling functions, as was permitted in the *Ameritech SS7 Waiver Order.* Ameritech Operating Companies Petition for Waiver of Part 69 of the Commission's Rules to Establish Unbundled Rate Elements for SS7 Signalling, Order, DA 96–446 (1996) (*Ameritech SS7 Waiver Order*).

66. *Retail Marketing Expense.* Price cap LECs may no longer recover certain marketing expenses through per-minute access charges assessed on IXCs. These expenses are recovered from end users through per-line charges on second and additional residential lines and multi-line business lines, subject to ceilings on SLCs. Any residual shall be recovered through the PICCs on these lines and then through per-minute charges on originating access, subject to the exception described in Section III.A, below.

III. Rate Structure Modifications

A. Common Line

1. Overview

67. In the 1983 *MTS and WATS Market Structure Third Report and Order,* the Commission established a comprehensive mechanism for incumbent LECs to recover the costs associated with their provision of access service required to complete interstate and foreign telecommunications. The access plan distinguished between traffic sensitive costs and NTS costs incurred by an incumbent LEC to provide interstate access service An incumbent LEC's NTS costs of providing interstate access, or costs that do not vary with the amount of usage, include the common line, or ''local loop,'' which connects an end user's home or business to a LEC central office.

68. In the *MTS and WATS Market Structure Third Report and Order,* the Commission emphasized that its long range goal was to have incumbent LECs recover a large share of the NTS common line costs from end users instead of carriers, and to recover these costs on a flat-rated, rather than on a usage-sensitive, basis. The Commission recognized, however, that a sudden increase in the flat rates imposed by LECs on end users could have a detrimental effect on universal service. For this reason, the rules adopted in 1983 apportioned charges for common line costs between a monthly flat-rated end-user SLC and a per-minute CCL charge assessed to the IXCs. The SLC is based on average interstate-allocated common line costs, which the incumbent LEC may average over an entire region or over a study area, depending on how it files its interstate tariff. These charges currently are the lesser of the per-line average common line costs allocated to the interstate jurisdiction or $3.50 per month for residential and single-line business users, and $6.00 per month for multi-line business users. Any remaining common line revenues permitted under our price cap rules are recovered by incumbent price cap LECs through per-minute CCL charges assessed on the IXCs, and are ultimately recovered by IXCs from end-users through long distance toll charges.

69. Because common line and other NTS costs do not increase with each additional minute of use transmitted over the loop, the current per-minute CCL charge that recovers loop costs represents an economically inefficient cost-recovery mechanism and implicit subsidy. A rate structure that recovers NTS costs through per-minute charges creates an incentive for customers to underutilize the loop by requiring them to pay usage rates that significantly exceed the incremental cost of using the loop. Additionally, a rate structure that forces high-volume customers to pay significantly more than the cost of the facilities used to service them is not sustainable in a competitive environment because high-volume customers can migrate to a competitive LEC able to offer an efficient combination of flat and per-minute charges, even if the competitive LEC has the same or higher costs than the incumbent LEC.

70. The Federal-State Universal Service Joint Board stated, in its *Recommended Decision,* that primary residential and single-line business lines are essential to the provision of universal service, and that current rates for local services are generally affordable based on subscribership levels. The Joint Board also concluded that the SLC, as a charge assessed directly on local telephone subscribers, has an impact on universal service concerns such as affordability, and recommended that the Commission leave the current SLC ceilings in place for primary residential and single-line business lines. In our companion *Universal Service Order,* consistent with that recommendation, we conclude that we should not raise the current $3.50 SLC ceiling on primary residential and single-line business lines.

71. We adjust the SLC ceilings for multi-line business lines and residential lines beyond the primary connection. Adjusting the SLC ceilings for multi-line business lines and non-primary residential lines will permit incumbent LECs to recover directly from end users more of the common line revenues permitted under our price cap rules for those lines and will reduce the amount of NTS costs related to these lines that are currently recovered through CCL charges. Where the SLC ceilings do not allow the incumbent LEC to recover its price cap common line revenues through end-user charges, the remaining, or ''residual'' amount will be recovered through flat, per-line charges assessed to each customer's presubscribed interexchange carrier. This presubscribed interexchange carrier charge, or ''PICC'', will increase gradually until the incumbent price cap LECs'' full interstate-allocated common line revenues permitted under our price cap rules are recovered through a combination of flat-rated SLCs and PICCs. To the extent that the flat-rated charges do not recover, during the initial phase, the full interstate-allocated common line revenues permitted under our price cap rules, incumbent LECs may continue to assess the IXCs a per-minute CCL charge based on the costs not recovered through flat-rated charges. This per-minute charge, however, will be generally much lower than today's CCL charge and will be eliminated once all common line revenues are recovered through a combination of SLCs and PICCs.

2. Subscriber Line Charge

a. Background

72. In the NPRM we proposed to increase the ceiling on the SLC for second and additional lines for residential customers, and for all lines for multi-line business customers, to the per-line loop costs assigned to the interstate jurisdiction. Access Charge Reform Notice of Proposed Rulemaking in CC Docket No. 96–262, Price Cap Performance Review for Local Exchange Carriers and Transport Rate Structure

and Pricing, Third Report and Order, in CC Docket Nos. 94–1 and 91–213 (*Price Cap Third Report and Order*), and Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Inquiry in CC Docket No. 96–263, 62 FR 4670 (December 24, 1996) (NPRM) Alternatively, we proposed to eliminate the ceiling for multi-line business customers and for residential connections beyond the primary connection, especially where the incumbent LEC has entered into interconnection agreements and taken other steps to lower barriers to actual or potential local competition. We sought comment on these proposals. We also invited parties to comment on whether any changes that we adopt to the ceiling on SLCs for incumbent price cap LECs should be extended to incumbent rate-of-return LECs, and on the relationship of any such changes to the *Joint Board Recommended Decision*. We sought comment on whether to establish a transition mechanism for this increase if the ceilings on SLCs for multi-line business lines and residential lines beyond the primary connection are increased and whether such a transition could be implemented consistent with section 254, the Act's universal service provision. We sought comment on whether geographic averaging of SLCs is an implicit subsidy that is inconsistent with the requirements of section 254(e), and thus on whether we are required to deaverage SLCs.

b. Discussion

73. The Commission has had the longstanding goal of ensuring that all consumers have affordable access to telecommunications services. In its *Recommended Decision*, the Joint Board stated that current rates for local telephone services are generally affordable and that the SLC, as a charge assessed directly on local telephone subscribers, has an impact on universal service concerns such as affordability. The Joint Board further recommended that the Commission maintain the current SLC ceilings for primary residential and single-line business lines, and we adopt that recommendation in our companion *Universal Service Order*. Numerous parties in this proceeding argue that we should raise or eliminate the SLC ceiling on all lines to permit LECs to recover the full interstate allocated costs of the local loop from end-users. This would increase the average SLC for all residential and single-line business lines from $3.50 per month to $6.10 per month. We conclude that it would be inappropriate to make significant changes to the SLC cap for primary residential and single-line business lines. Primary residential and single-line business lines are central to the provision of universal service. Because of concerns about affordability, and in light of the significant changes that are still underway in this proceeding, in the federal universal service support proceeding, and possible future changes to the separations process, we conclude that the current SLC for these lines should not be raised. Consistent with the Joint Board's recommendation and our conclusion in the *Universal Service Order*, therefore, the ceiling on the SLC for primary residential and single-line business lines will remain at $3.50 or the permitted price cap common line revenues per line, whichever is less.

74. With regard to multi-line users, the Joint Board suggested in its *Recommended Decision* that universal service support should not be extended to non-primary residential lines and multi-line business lines because it found that cost of service is unlikely to be a factor that would cause multi-line users not to subscribe to telephone service. Subsequently, the state members of the Joint Board filed a report with the Commission in which they proposed that we retain high cost support for all lines served in high cost study areas during a transition to a forward-looking cost methodology. Consistent with that proposal, we adopt, in our *Universal Service Order*, a modified version of the existing high-cost support system and continue support for all residential and business connections in areas currently receiving high cost support until at least January 1, 1999. We therefore continue to provide high cost support for non-primary residential and multi-line business lines at this time, by allocating a lower portion of these costs to the intrastate jurisdiction than would otherwise be the case. In that order, we also express our concern, however, that providing universal service support for non-primary residential and multi-line business lines in high-cost areas may be inconsistent with our long-term universal service goals, and that overly expansive universal service support mechanisms potentially could harm all consumers by increasing the expense of telecommunications services for all. We state that we will continue to evaluate the Joint Board's recommendation to limit universal service support to primary residential connections and businesses with single connections.

75. We conclude here that it is necessary to adjust the ceilings on the interstate SLCs on both non-primary residential and multi-line business lines in order to create a rate structure that supports our long-term universal service goals, is pro-competitive, and is sustainable in a competitive local exchange market. Section 254 of the Act requires that all consumers have access to basic telephone service at just, reasonable, and affordable rates that are comparable among different regions of the nation. This section of the Act also requires that universal service support be achieved through support mechanisms that are ''specific, predictable, and sufficient.'' Because universal service concerns about ensuring affordable access to basic telephone services are not as great for non-primary residential and multi-line business lines as they are for primary residential and single-line business lines, we must take action to remove the implicit subsidies contained in our current interstate access charges. Thus, we are adopting a rate structure that will permit LECs to recover greater amounts of their costs on a flat-rated basis from end users and to reduce the amount of revenues they must recover through per-minute access charges. Our initial implementation improves upon the current rate structure because it reduces subsidies by recovering more costs from the cost causer. It also creates a rate structure that is more pro-competitive than the existing one by providing for greater flat-rated recovery of NTS costs. Without these modifications, new entrants, which are not subject to the non-cost-causative rate structure requirements, would be in a position to target the incumbent LECs' most profitable, high-volume customers based on regulatory requirements. A loss of profitable customers would increase the incumbent LECs' costs of providing service to the rest of their customers, especially to those in high-cost areas. Consistent with our universal service goal of ensuring that all consumers receive affordable rates that are comparable in different parts of the nation, however, the SLC adjustments will be subject to ceilings to prevent end-user customers in high-cost areas from paying SLCs that are significantly higher than in other parts of the country.

76. In virtually all cases, current SLC ceilings do not permit incumbent LECs to recover their average per-line interstate-allocated common line costs. As a result of the existing SLC ceilings, which have been in place for the past decade, incumbent LECs must recover the shortfall through usage-sensitive CCL charges assessed on IXCs. The IXCs in turn recover most or all of these costs from toll users in the form of per-minute

charges, keeping toll rates artificially high and discouraging demand for interstate long distance services. The high per-minute toll charges also create support flows between different classes of customers. For example, because end-user customers vary widely in their use of interstate long distance services, low-volume toll users do not pay the full cost of their loops while high-volume toll users contribute far more than the total cost of their loops. In addition high-volume toll users, who include significant numbers of low-income customers, effectively support non-primary residential and multi-line business customers.

77. In order to create a rate structure that supports our long-term universal service goals, is pro-competitive, and is sustainable in a competitive market, we modify our rate structure requirements to permit incumbent LECs to recover costs in a manner that more accurately reflects the way those costs are incurred. Because common line costs do not vary with usage, these costs should be recovered on a flat-rated instead of on a per-minute basis. In addition, these costs should be assigned, where possible, to those customers who benefit from the services provided by the local loop. Accordingly, the SLC ceilings for non-primary residential and multi-line business lines will be adjusted generally to a level that permits incumbent LECs to recover, directly from the end user, their average per-line interstate common line revenues.

78. For multi-line business lines, the SLC will be adjusted to recover the average per-line interstate-allocated common line costs beginning July 1, 1997. To the extent incumbent price cap LECs, mostly in rural areas, have common line costs that significantly exceed the national average, we establish a ceiling on SLCs for multi-line business lines of $9.00, adjusted annually for inflation. To ameliorate any possible adverse impact of adjustments in SLC ceilings for non-primary residential lines, we adopt an approach that will gradually phase in adjustments in the SLC ceilings for these lines. The SLC for non-primary residential lines will be adjusted initially beginning January 1, 1998. For the first year, beginning January 1, 1998, the SLC ceiling for non-primary residential lines will be adjusted to the incumbent LEC's average per-line interstate-allocated costs, but may not exceed $1.50 more than the current SLC ceiling. Beginning January 1, 1999, the monthly SLC ceiling for these lines will be adjusted for inflation and will increase annually by $1.00 per-line, until the SLC ceiling for non-primary residential lines is equal to the ceiling permitted for multi-line business lines.

79. The data indicate that the long term ceilings we are establishing will permit incumbent price cap LECs to recover their average per-line common line revenues from 99 percent of their non-primary residential and multi-line business lines. For the few incumbent price cap LECs that have common line costs in certain study areas that exceed the ceiling, the ceiling will serve as an economic safeguard for those customers who would otherwise pay significantly higher SLCs. We conclude that maintaining a ceiling for non-primary residential and multi-line business customers in high-cost areas is a reasonable response to a legitimate universal service concern because, consistent with section 254(b)(3), it ensures that these customers have access to telecommunication services at rates that are comparable to rates charged for similar services in urban areas.

80. We believe that the approach we adopt should prevent widespread discontinuance of lines by multi-line customers. The record indicates that nationwide, the average interstate allocation of common line costs is only $6.10 per line, and that for more than half of multi-line business lines, the interstate common line costs are below the existing $6.00 ceiling. Therefore, when the SLC ceiling is adjusted July 1, 1997, more than half of multi-line business lines will see no immediate increase in their SLC. The $5.00 SLC ceiling for non-primary residential lines for the first year is a net increase of $1.50 per month, and the gradual increase, if any, in subsequent years, is designed to allow these customers time to adjust to the new rate structure. Moreover, we expect the rate structure modifications we adopt in this order to benefit the majority of multi-line customers through reductions in per-minute long distance rates. Thus, for many customers, the access restructuring will lead to an overall reduction in their telephone bill. We also note that, because we are adjusting the SLC on non-primary residential lines only to a level that recovers the average interstate allocated costs attributable to the line, to the extent that a customer chooses not to purchase an additional line because of the SLC increase, it is because the benefits of the second line to that customer are less than the average cost of the line.

81. Many parties contend that adjusting the SLC ceiling for non-primary residential lines and multi-line business lines will affect economic development in rural areas. To respond to this concern, with the limited exception of cost allocation to new elements, discussed in Section V, below, we are limiting application of the rate structure modifications we adopt in this Order to incumbent price cap LECs only. Most consumers in rural areas are served by small rate-of-return LECs that are not affected by the SLC adjustment we are adopting. We will review rate structure modifications affecting small, rural carriers in a separate proceeding when we address access charge reform for those carriers. To the extent there are incumbent price cap LECs that serve high-cost areas of the country and have common line costs that exceed the national average, we are maintaining a ceiling on the SLCs for these lines to ensure that subscribers do not pay rates that greatly exceed the national average.

82. We are not persuaded by arguments that an upward adjustment to a SLC ceiling that was set over a decade ago, and that has never been adjusted for inflation, would violate section 254(b)'s requirement that consumers in all regions of the nation have affordable access to telecommunications and information services at rates that are reasonably comparable to those services provided in urban areas. The data indicate that if the SLC ceilings for business and residential lines had been adjusted annually for inflation since they became effective in 1984 and 1989, respectively, the $6.00 business SLC ceiling would have increased by 1996 to $9.00 per line, and the $3.50 residential and single-line business SLC ceiling would have increased to $4.39 per line. Thus, for multi-line business customers, the SLC ceiling we adopt today is not significantly different from what it would have been, if it had been adjusted for inflation annually. Moreover, to adopt a ceiling lower than $9.00 would effectively create an additional impermissible subsidy for a class of customers not enumerated by Congress in section 254 of the 1996 Act as beneficiaries of fundamental universal service goals. We find that the $9.00 ceiling we adopt today strikes a reasonable balance between our desire to establish a more efficient interstate access charge rate structure consistent with our long-term universal service goals in a competitive local exchange environment, and the need to avoid precipitous rate increases to consumers in high cost areas. Although SLCs in some areas may ultimately be lower than SLCs in high-cost areas, we conclude that $9.00 SLCs remain ''reasonably comparable'' to those in urban areas.

83. We are also not persuaded that we should maintain the current SLC ceiling

for non-primary residential lines because of claims that incumbent LECs will be unable to identify second lines for purposes of billing different SLCs to these lines. Additional telephone lines are a well-established telecommunications product marketed by LECs. This product is supported by a marketing and billing infrastructure that will enable LECs to distinguish non-primary residential lines for purposes of billing different SLCs. We note that we are not defining ''primary'' or ''non-primary'' lines in this Order. In a further notice of proposed rulemaking in the Universal Service proceeding, we will address this issue, and release an order defining ''primary''and ''non-primary'' residential lines by the end of the year.

84. We are unpersuaded by arguments that we should forgo these changes on the grounds that increasing the SLC ceilings for non-primary residential lines will create undue incentives for subscribers to order their primary lines from the incumbent LEC and their additional lines from competitors. The changes we adopt in this Order are intended to permit incumbent LECs to move their prices for non-primary residential and multi-line business lines toward more economically efficient levels by substantially reducing implicit subsidies flowing between different classes of customers. Once these subsidies are eliminated and the new universal service regime is fully implemented, incumbent LECs will be able to recover their common line costs from customers through a rate structure that accurately reflects the manner in which these costs are incurred, and through a targeted, portable universal service contribution where necessary. At that point, both incumbent LECs and new entrants should be able to compete efficiently in the local exchange market. Subscribers, therefore, should not have an incentive to use other carriers for their additional lines unless a competitor is operating more efficiently and can offer local exchange service at a lower rate than the incumbent LEC is able to offer. Indeed, the ability of a competitive local exchange carrier to offer local exchange service at a lower rate is precisely the type of competition envisioned by the 1996 Act: it will encourage the incumbent LEC to reduce its costs of providing service in order to meet or beat the prices of its competition.

85. To address the concerns of some commenters that charging a higher SLC for second and additional residential lines will encourage subscribers to order their additional line from competitors, we will permit LECs to charge competitors the higher SLC when the competitor provides a customer with a second line through resale of an incumbent LEC offering. If prior to the development of full competition, we find that disparity between SLC charges on primary and additional residential lines becomes a significant problem, we will reexamine this issue in conjunction with further reforms we adopt in an upcoming order.

86. Certain incumbent LECs have requested that any rule that increases the SLC ceiling for non-primary residential lines should be optional for LECs. We adopt this proposal in part and will not require LECs to charge a higher SLC for non-primary residential lines. Thus, if an incumbent LEC finds that charging higher SLCs leads to a large number of disconnections, it is free to charge less. To the extent price cap LECs choose to charge a SLC that is less than the maximum allowed, however, they may not recover these foregone revenues through the PICC or CCL charges. This restriction is consistent with our current price cap rules, which prevent LECs from transferring SLC costs to the CCL charge.

87. Several incumbent price cap LECs argue in favor of deaveraging SLCs, stating that an averaged SLC creates cross-subsidies between high-cost and low-cost areas, in violation of section 254 of the Act. We will resolve this issue, along with issues concerning the timing and degrees of geographic deaveraging, pricing flexibility, and ultimate deregulation in an upcoming order.

3. Carrier Common Line Charge

a. Background

88. Because we are retaining the $3.50 ceiling on SLCs for primary residential and single-line business customers, virtually all price cap LECs will be unable to recover, through the SLC, all of their common line revenues permitted under our price cap rules. In the NPRM, we sought comment on possible revisions to the current CCL charge structure that would allow incumbent price cap LECs to recover these NTS common line costs in a way that reflects the way costs are incurred. We proposed a recovery mechanism suggested by the Joint Board in its *Recommended Decision* that would permit incumbent LECs to recover common line costs not recovered from SLCs through a flat, per-line charge assessed against each end-user's presubscribed interexchange carrier. The Joint Board suggested that the Commission allow incumbent LECs to collect the flat-rated charge directly from end users who have not selected a primary interexchange carrier (''PIC''). We sought comments on this approach and also invited parties to discuss any potential problems created when end-user customers have selected PICs, but use other IXCs for Internet, fax, interexchange, or other interstate services by ''dialing-around'' the PIC.

89. We also sought comment on several alternative approaches to the per-minute recovery of interstate NTS loop costs proposed by the Competition Policy Institute (CPI), including a ''bulk billing'' method that would assess a charge against the IXC based upon its percentage share of interstate minutes of use or revenues, a ''capacity charge,'' a ''trunk port charge,'' and a ''trunk port and line port'' charge. We invited parties to comment on whether any changes that we adopt to the recovery of interstate NTS local loop costs for price cap LECs should be extended to rate-of-return LECs, and on the relationship of interstate NTS loop cost recovery to the universal service mechanisms proposed in the *Joint Board Recommended Decision*. We asked parties to address how such an extension to rate-of-return LECs would affect small business entities, especially small incumbent LECs.

90. Additionally, we asked parties to address whether an alternative mechanism for recovering common line costs currently recovered through the CCL charge would be necessary if we were to eliminate the SLC ceiling for certain lines. We asked interested parties to address the extent to which any proposed alternative recovery mechanism for recovering common line costs currently recovered through the CCL charge would affect small business entities, including small incumbent price cap LECs and new entrants. We also sought comment on whether section 254(g) precludes an IXC from charging its customers the flat, per-line monthly rate assessed on that line if the amount of that charge varied among customers in different areas within a state or among customers in different states, and if so, whether conditions exist sufficient to require us to forbear from the application of section 254(g) to IXC recovery of flat-rate CCL charges.

b. Discussion

91. The $3.50 SLC ceiling for primary residential and single-line business customers prevents most incumbent price cap LECs from recovering, through end-user charges, all of the common line revenues permitted under our price cap rules. To the extent that common line revenues are not recovered through

SLCs, incumbent LECs will be allowed to recover these revenues through a PICC, a flat, per-line charge assessed on the end-user's presubscribed interexchange carrier.

92. We adopt the Joint Board's recommendation that incumbent LECs may collect directly, from any customer who does not select a presubscribed carrier, the PICC that could otherwise be assessed against the presubscribed interexchange carrier. Assessing the PICC directly against end users that do not presubscribe to a long distance carrier should eliminate the incentive for customers to access long-distance services solely through ''dial-around'' carriers in order to avoid paying long-distance rates that reflect the PICC. Several parties argue that this type of billing arrangement will create administrative difficulties because it will require LECs to prorate charges for both the end user and the IXC when a customer leaves an IXC in the middle of the billing cycle. To avoid any potential administrative difficulties resulting from customers leaving their presubscribed interexchange carriers in the middle of a billing cycle, we will permit LECs to assess the full PICC at the beginning of each billing cycle.

93. We recognize that this flat, per-line PICC will not prevent customers from ''dialing around'' their presubscribed long distance carrier to obtain interstate service. Collecting a PICC from a customer, however, in and of itself, creates no incentive for a customer to presubscribe to one carrier and use ''dial-around'' service of another. If the presubscribed carrier is an efficient competitor, it should be able to offer usage-based rates comparable to the prices of a competitor, thus eliminating any artificial benefits of ''dial-around'' capability. A combination of lower per-minute long distance rates and attractive long-distance pricing packages that reward customers for increasing their usage of the presubscribed interexchange carrier's services should also help deter customers from using separate long-distance carriers for various services solely because of regulation. There is customer contact value in being a customer's presubscribed interexchange carrier. Regulators have long concluded that the convenience of making a long-distance call by simply dialing ''1+'' conveys certain advantages. And the advantages of ''1+'' dialing will only increase if, as many predict, we move to a world in which ''one-stop shopping'' for a multiplicity of services becomes the primary paradigm for provision of telecommunication services. We conclude that the record does not support a finding that assessing a charge on the presubscribed carrier will artificially encourage ''dial-around'' traffic to such a degree that we should not adopt access charge modifications that will move substantially toward efficient pricing for common line elements and lower usage charges for long-distance service. If evidence appears to us that our rules do substantially contribute to undue use of ''dial-around'' capabilities to circumvent presubscribed interexchange services, we stand ready to revisit this issue at a later time.

94. The rate structure we are adopting calls for the single-line PICC ultimately to recover the difference between revenues collected through the SLC and the per-line common line revenues for primary residential lines and single-line business lines permitted under our price cap rules. In order to provide incumbent LECs and IXCs with adequate time to adjust to this rate structure change, we cap the PICC for primary residential and single-line business lines at $0.53 per month for the first year, beginning January 1, 1998, and establish ceilings on increases thereafter. We note that the monthly $0.53 PICC is approximately equal to the current presubscribed per-line charges that are assessed to IXCs for the Universal Service Fund and Lifeline Assistance plan, which are being eliminated in our *Universal Service Order*. Beginning January 1, 1999, the ceiling on the monthly PICC on primary residential and single-line business lines will be adjusted for inflation and will increase by $0.50 per year until the sum of the SLC plus the flat-rated PICC is equal to the price cap LEC's permitted common line revenues per line. In no event shall the sum of the single-line SLC and PICC exceed the sum of the maximum allowable multi-line SLC and multi-line PICC.

95. Sprint asserts that if LECs recover NTS common line costs through deaveraged rates assessed on IXCs, we must forbear from applying section 254(g) to the extent it requires an IXC to average geographically any flat charges an IXC passes on to its customers. WorldCom asserts that IXCs should be permitted to recover their costs in any manner the market will allow, and that unless the Commission forbears with respect to the application of section 254(g) to these costs, IXCs that operate nationally will be forced to average together numerous subscribers' loop costs, and thus use long-distance rates as a vehicle for cross-subsidies that run counter to the overall policies of section 254 (b) and (c). We conclude that the information in the record before us does not demonstrate that we are required, by section 10(a) of the Act, to forbear from enforcing section 254(g) as it relates to the manner in which IXCs recover their costs.

96. Section 10(a) of the 1934 Act requires the Commission to forbear from applying any regulation or provision of the Communications Act of 1934 if: (1) enforcement of that provision is unnecessary to ensure that the relevant charges and practices are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement of that provision is unnecessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. We conclude that, on the basis of the current record, IXCs have not demonstrated that forbearance of section 254(g) is warranted at this time.

97. We find that establishing a broad exception to section 254(g) to permit IXCs to pass through flat-rated charges on a deaveraged basis may create a substantial risk that many subscribers in rural and high-cost areas may be charged significantly more than subscribers in other areas. Accordingly, we cannot conclude that enforcing our rate averaging requirement is unnecessary to ensure that charges are just and reasonable. In addition, because assessing subscribers flat-rated charges on a deaveraged basis could lead to significantly higher rates for subscribers in high-cost areas, we find no basis in this record to conclude that it is unnecessary to enforce section 254(g) to ensure protection of consumers or to protect the public interest. In contrast, IXCs cite no countervailing public interest considerations but merely make broad, unsupported assertions of the need to deaverage rates in light of the varying PICC amounts expected to be assessed by incumbent LECs. We also note that IXCs now pay access charges that often vary from location to location and from incumbent LEC to incumbent LEC, and still maintain geographically averaged rates. We therefore conclude that, based on the record before us, the IXCs have not met the test set forth in section 10(a) of the Act, and forbearance of section 254(g) is not warranted.

98. We note that we will continue to examine the issue of whether conditions exist that require us to forbear from application of section 254(g) as it relates to recovery of the PICC costs from subscribers. We will resolve this and other specific issues concerning the timing and degrees of pricing flexibility and ultimate deregulation in an upcoming order.

99. To the extent that the SLC ceilings on all lines and the PICC ceilings on

primary residential and single-line business lines prevent recovery of the full common line revenues permitted by our price cap rules, incumbent price cap LECs may recover the shortfall through a flat-rated, per-line PICC on non-primary residential and multi-line business lines. The incumbent LECs will calculate this additional charge by dividing residual permitted common line revenues by the number of non-primary residential and multi-line business lines served by the LEC. For the first year, the ceiling on the PICC will be $1.50 per month for non-primary residential lines and $2.75 per month for multi-line business lines. To the extent that these PICCs do not recover an incumbent LEC's remaining permitted CCL revenues, incumbent LECs will be allowed to recover any such residual common line revenues through per-minute CCL charges assessed on originating access minutes. The per-minute charges shall be calculated based on forecasts of originating access minutes as currently provided in our rules.

100. We generally will not permit incumbent LECs to recover residual common line revenues through per-minute CCL charges assessed on terminating access minutes, because terminating minutes are not likely to be subject to as much competitive pressure as originating access minutes. As discussed in Section III.D, below, we are similarly adopting a rule that requires that incumbent LECs be allowed to recover certain residual transport interconnection charge costs through access charges assessed on originating minutes. In placing these various residual costs on originating minutes only, however, we do not want to destroy the salutary effects of our access charge reforms by creating higher prices for originating minutes than exist under our current access charge rules. To the extent, therefore, that the sum of local switching charges, the per-minute CCL charge, the per-minute residual TIC, and any per-minute charges related to marketing expenses exceed the current sum of local switching charges and the per-minute CCL charge and TIC assessed on originating minutes, the excess may be recovered through charges assessed on terminating minutes. We emphasize that any such amounts recovered through charges assessed on terminating minutes would be temporary and would be phased out as the non-primary residential SLC ceilings and the PICC ceilings are adjusted, and in any event, no later than July 1, 2000.

101. Beginning January 1, 1999, the PICC will be adjusted for inflation and will increase by a maximum of $1.00 per year for non-primary residential lines and $1.50 per year for multi-line business lines, until incumbent LECs recover all their permitted common line revenues through a combination of flat-rated SLC and PICCs. These increases will cease as the PICCs on primary residential and single-line business lines recover more of the common line revenues permitted under price cap rules. In addition, as the incumbent price cap LECs increase their PICCs for primary residential and single-line business lines, they shall reduce the amount recovered from the residual per-minute CCL charges and reduce their PICCs on non-primary residential and multi-line business lines by a corresponding amount in accordance with the procedures described below. While the plan we adopt today does not eliminate, even on a flat-rated basis, transitional higher rates for business users, it redistributes collection from a very few high-volume users to business users generally. This will permit the charges to be sustainable while we finish refining access charges and implement a forward-looking cost-based universal service mechanism for rural, insular, and high cost areas. We also acknowledge that our plan will require customers with multiple telephone lines to contribute, for a limited period, to the recovery of common line costs that incumbent LECs incur to serve single-line customers. We conclude that this aspect of the plan is a reasonable measure to avoid an adverse impact on residential customers.

102. As the PICC ceilings on primary residential and single-line business lines increase, the residual per-minute CCL charge will decrease until it is eliminated. After the residual per-minute CCL is eliminated, incumbent LECs shall make further reductions due to the increase in the PICC ceilings for primary residential and single-line business lines, first to the PICCs on multi-line business lines until the flat-rated PICCs for those lines are equal to the flat-rated PICCs for non-primary residential lines. Thereafter, incumbent LECs shall apply the annual reductions to both classes of customers equally until the combined SLC and PICCs for primary residential and single-line business lines recover the full average per-line common line revenues permitted under our price cap rules, and the additional flat-rated PICCs on non-primary residential and multi-line business lines no longer recover common line revenues. As discussed in Sections III.D and IV.D, below, the PICC will recover TIC revenues and certain marketing expenses in addition to common line revenues. Therefore, multi-line PICCs may continue to recover non-common line revenues, even though SLCs and PICCs for primary residential and single-line business lines recover the average per-line common line revenues permitted under our price cap rules. If the incumbent LEC's per-line common line revenues permitted by our price cap rules exceed the SLC ceiling for non-primary residential lines and multi-line businesses, the flat-rated charges will continue to apply to those lines so that the sum of the SLCs and flat-rated charges is equal to the permitted common line revenues. Once the multi-line PICC no longer recovers any common line revenues, the calculation of the SLC will be changed from the average per-line interstate allocation of revenue requirement to the average per-line common line revenues permitted by our current price cap rules. With this change, the LEC will not be able to recover more than the average per-line common line revenues permitted under our price cap rules from any access line. We note that at least one party contends that under our current rules, certain price cap carriers could be required to charge negative carrier common line charges, if the revenues recovered through the SLC, which continues to be developed on a cost-of-service basis, exceed the PCI for the common line basket. This adjustment to the calculation of the SLC will solve any such problem.

103. We are concerned that assessing PICCs on multi-line business lines may create an artificial and undue incentive for some multi-line customers to convert from switched access to special access to avoid the multi-line PICC charges. A migration of multi-line customers to special access could significantly reduce the amount of revenue that could be recovered through per-minute charges, and would result in higher PICCs for the non-primary residential and multi-line business lines remaining on the switched network. We tentatively conclude that we should therefore apply PICCs to purchasers of special access lines as well. The NPRM, however, may not have provided sufficient notice to interested parties that we might apply certain rate structure modifications to special access lines. We therefore seek comment on this issue in Section VII.A, below.

104. We reject claims that a flat-rated, per-line recovery mechanism assessed on IXCs would be inconsistent with section 254(b) which requires ''equitable and nondiscriminatory contribution to universal service'' by all

telecommunications providers. The PICC is not a universal service mechanism, but rather a flat-rated charge that recovers local loop costs in a cost-causative manner. Numerous commenters responding to the NPRM support a flat-rated cost recovery mechanism, and we conclude that the PICC is preferable to the other proposals made in the NPRM. We agree with MCI and the Minnesota Independent Coalition that proposals based on the number of trunks or ports that an IXC purchases from the incumbent LEC may encourage IXCs to use fewer trunks or ports than are needed and thereby have an adverse effect on service quality. We decline to adopt the bulk billing approach set out in the NPRM, as well as Ameritech's proposed Loop/Port Recovery charge and the approach proposed by the Competition Policy Institute, because these mechanisms are substantially affected by usage and do not reflect the NTS manner in which common line costs are incurred. The Alliance for Public Technology's proposed ''facilities charge,'' which is a hybrid system that accounts both for level of use and intensity of use by all telecommunication carriers that use the local network, is flawed because it is based partly on usage and is complex and administratively burdensome. A cost-recovery mechanism that recovers common line costs through flat-rated charges imposed on end-user customers and IXCs is an administratively simple mechanism. Further, under our plan, interstate common line access charges will become more closely aligned with allocated interstate costs than they would be under any of the alternative proposals.

105. The plan we describe above should move us from the pricing scheme that has been in place for more than a decade to a flat-rated pricing scheme that seeks to promote competition, while balancing universal service considerations. We recognize that the modifications we adopt in this Order do not eliminate all the existing support flows. The modifications, however, do move to eliminate subsidies built into the current rate structure, to an extent that is compatible with preserving the universal service goals of providing support to primary residential and single-line business and to customers in high-cost areas pursuant to the mandate of section 254. As we set final support levels for universal service, address any legal issues related to the transition from embedded to forward-looking economic costs, and factor in the development of competition, we will identify and deal with any remaining legal issues relating to the recovery of these revenues. In addition, the plan we are adopting allows incumbent price cap LECs to recover costs in the manner that reflects the way in which they are incurred. We believe that this realignment of rates with costs will reduce the per-minute access charges assessed on IXCs and benefit consumers through lower long-distance rates, as well as create a pro-competitive local exchange market in which LECs will be able to compete more efficiently.

4. Common Line PCI Formula

a. Background

106. When we adopted price cap regulation in 1990, we established a separate common line basket in order to balance the price cap goal of economically efficient prices with important goals, such as universal service, that were reflected in common line rates prior to the adoption of price caps. Because common line costs are non-traffic sensitive, growth in demand leads to a reduction in average per-minute common line charges. Therefore, in the *LEC Price Cap Order,* we established a price cap index (''PCI'') formula for the price cap basket that differed from the PCI formula we established for the other three baskets, to ensure that carrier common line charges declined as common line demand increased. Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313, Second Report and Order, 55 FR 42375 (October 19, 1990) (*LEC Price Cap Order*). Specifically, we added a term, ''g/2,'' to the common line PCI formula, to represent half the growth in demand per line in the prior year. This adjustment was made because we originally concluded that both LECs and IXCs have the ability to influence common line growth, and that both LECs and IXCs should benefit from increases in demand.

107. In the *LEC Price Cap Performance Review,* we found that incumbent LECs in fact have little influence over per-minute common line demand, and tentatively concluded that we should remove the ''g'' term from the common line formula, because including an industry-wide moving average X-Factor in the common line formula might tend to double-count demand growth. Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94–1, First Report and Order, 60 FR 19526 (April 19, 1995) (*LEC Price Cap Performance Review*). We sought comment, in the *Price Cap Fourth Further NPRM,* whether to apply the same PCI formula to the common line basket that we use for the other baskets if we were to adopt a TFP-based X-Factor. Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94–1, Further Notice of Proposed Rulemaking, 60 FR 52362 (October 6, 1995) (*Price Cap Fourth Further NPRM*). We also invited comment on whether we could eliminate g/2 from the common line formula if we retain a separate common line formula. In this Order, we adopt a plan that should quickly convert the CCL charge from a per-minute charge to a flat-rated per-line charge assessed on interexchange carriers. We also revise the common line formula to reflect the phase out of the CCL charge.

b. Discussion

108. We conclude that the separate common line PCI formula should be eliminated, and that the PCI formula for the traffic-sensitive and trunking baskets should be used for the common line basket, once traffic-sensitive CCL charges have been eliminated. In this Order, we have reduced substantially traffic-sensitive CCL charges, and replaced them with the per-line PICC. The remaining traffic-sensitive CCL charges imposed by incumbent price cap LECs will be reduced and then eliminated over the next two or three years. Once common line costs are recovered solely through per-line charges, increased minutes will not affect common line recovery. Therefore, when the traffic-sensitive CCL charges have been eliminated, it will no longer be necessary to ensure that CCL rates decline as per-minute demand increases. Incumbent price cap LECs that no longer assess per-minute CCL charges will use the same PCI formula for the common line basket as they use for the traffic-sensitive and trunking baskets.

109. In the *LEC Price Cap Order,* we established ''g/2'' as the common line PCI formula because we believed that because both LECs and IXCs contributed to encouraging common line demand growth, both LECs and IXCs should share in the benefits of common line demand growth. In the *LEC Price Cap Performance Review,* we tentatively concluded that IXCs contributed more to common line demand growth, but declined to revise the common line formula at that time because we were contemplating eliminating the common line PCI formula completely, and because we did not wish to create unnecessary rate churn. To avoid unnecessary rate churn here, we decide to retain ''g/2'' while carriers continue to charge per-minute CCL charges.

110. We revise sections 61.45(c) and 61.46(d), which govern the common line PCI and API, respectively, to reflect our revisions to the common line rate structure in the common line PCI formula. First, we redesignate section 61.45(c) as 61.45(c)(1) and adopt a new section 61.45(c)(2) that requires price cap LECs to use the separate common line formula only while they continue to charge per-minute CCL charges. Section 61.45(c)(2) also states that the common line PCI will be governed by the same PCI formula LECs use for the traffic-sensitive and trunking baskets. Second, we redesignate section 61.46(d) as 61.46(d)(1), and amend section 61.46(d)(1) to recognize that LECs now impose PICC charges as well as CCL charges on IXCs. We also adopt a new section 61.46(d)(2) to govern PICC charges once per-minute CCL charges have been phased out. These revisions are set forth in Appendix C of this Order.

5. Assessment of SLCs and PICCs on Derived Channels

a. Background

111. Integrated services digital network (ISDN) services permit digital transmission over ordinary local loops through the use of advanced hardware and software. ISDN offers data transmission at higher speeds and with greater reliability than standard analog service. Most incumbent LECs currently offer two types of ISDN service, Basic Rate Interface (BRI) service and Primary Rate Interface (PRI) service. BRI service allows a subscriber to obtain two voice-grade-equivalent channels and a signalling/data channel over an ordinary local loop, which generally is provided over a single twisted pair of copper wires. PRI service allows subscribers to obtain 23 voice-grade-equivalent channels and one data signalling channel over two pairs of twisted copper wires. BRI service generally is used by individuals and small businesses, and PRI service generally is used by larger businesses. LEC services other than ISDN use derived channel technology to provide multiple channels over a single facility. The LECs also use derived channel technologies within their networks, for example, to provide customers with individual local loops. In such situations, the end user has not generally requested derived channel service and thus most likely is not aware that the LEC is using this technology.

112. On May 30, 1995, we released a Notice of Proposed Rulemaking seeking comment on the application of SLCs to ISDN and other derived channel services. End User common Line Charges, CC Docket No. 95–72, Notice of Proposed Rulemaking, 60 FR 31274 (June 14, 1995) (*ISDN SLC NPRM*). In the *ISDN SLC NPRM,* we noted that our current rules, which assess one SLC per derived channel, may discourage efficient use of ISDN services, and we sought comment on several options, ranging from continuation of the current rules applying one SLC to each derived channel to requiring LECs to assess one SLC per each pair of copper wires or each physical facility. Other options presented in the *ISDN SLC NPRM* included: (1) basing the application of SLCs on a ratio of the average LEC cost of providing a derived channel service, including the trunk or line card costs, to the average cost of providing an ordinary local loop or T–1 facility; (2) applying one SLC for every two derived channels; (3) reducing the number of SLCs applied to derived channel services while increasing slightly the SLC rates; or (4) giving LECs flexibility concerning the number of SLCs they assess for derived channel services, at the same time adjusting the price cap rules to prevent an increase in CCL charges.

113. In addition to the comments filed in response to the *ISDN SLC NPRM,* several BOCs provided data on the relative NTS costs of single and derived channel services. The cost data included information about all NTS cost components, including components located in the central office, such as line cards. As shown in Table 1 below, the cost data indicates that the ratio of NTS loop costs of BRI ISDN to standard analog service is approximately 1 to 1. The ratio of NTS loop costs of PRI ISDN to standard analog service, excluding NYNEX's data, is approximately 5 to 1. As shown in Table 2, NYNEX's data appear to be outliers because the ratios of its outside plant and NTS costs for PRI ISDN to standard analog service are almost twice those of other incumbent LECs. NYNEX's data, therefore, are excluded from the calculation of the average ratio for PRI ISDN to standard analog service.

TABLE 1.—RATIO OF COSTS OF STANDARD ANALOG SERVICE TO BRI ISDN SERVICE

	Outside plant (loop only) costs	All NTS costs
Ameritech	1:1.07	1:1.45
Bell Atlantic	1:1.01	1:1.36
NYNEX	1:0.85	1:1.23
Pacific Bell	1:1.05	1:1.13
US West	1:0.80	1:1.07
Average ratio of costs	*1:0.96	*1:1.24

*Averages may differ due to rounding.

TABLE 2.—RATIO OF COSTS OF STANDARD ANALOG SERVICE TO PRI ISDN SERVICE

	Outside plant (loop only) costs	Outside plant (loop only) costs (excluding NYNEX data)	All NTS costs	All NTS costs (excluding NYNEX data)
Ameritech	1:5.68	1:5.68	1:8.9	1:8.9.
Bell Atlantic	1:4.13	1:4.13	1:15.80	1:15.80.
NYNEX	1:10.94	Excluded	1:27.74	Excluded.
Pacific Bell	1:4.67	1:4.67	1:8.70	1:8.70.
US West	1:5.33	1:5.33	1:10.60	1:10.60.

TABLE 2.—RATIO OF COSTS OF STANDARD ANALOG SERVICE TO PRI ISDN SERVICE—Continued

	Outside plant (loop only) costs	Outside plant (loop only) costs (excluding NYNEX data)	All NTS costs	All NTS costs (excluding NYNEX data)
Average ratio of costs	*1:6.5	1:4.95*	*1:15.13	1:10.5*.

*Averages may differ due to rounding.

114. We incorporated by reference, in the current proceeding, all pleadings filed in response to the 1995 *ISDN SLC NPRM*, as listed in Appendix A of that order. In the NPRM for the current proceeding, we invited comments on the effect of the 1996 Act on determining how many SLCs should be applied to ISDN services. We also sought comment on whether mandatory rate structures or rate caps should be prescribed for ISDN service or other derived channel services.

b. Discussion

115. Consistent with the goal of this Order of realigning cost recovery in a manner that more closely reflects the manner in which those costs are incurred, we conclude that we should establish separate SLC rates for ISDN service based on the NTS loop costs of BRI and PRI ISDN service. We agree with the majority of commenters that a SLC for ISDN service equal to a SLC for single-channel analog service multiplied by the number of derived channels exceeds the NTS costs of ISDN service and therefore artificially discourages efficient use of ISDN. We find that basing ISDN SLCs on relative costs is most likely to assign costs of ISDN service to customers who subscribe to, and benefit from, that service. Further, we find that the current SLC-per-derived channel rule requires LECs to assess charges that are not related to the NTS costs of the service provided.

116. As set out above, the record indicates that the NTS loop costs of PRI ISDN service, excluding switching costs, reflect a cost ratio of approximately 5:1 compared to the NTS loop costs of single-channel analog service. We therefore conclude that we should amend our rules to establish, effective July 1, 1997, a SLC rate for PRI ISDN service equal to five times the incumbent LEC's average per-line interstate-allocated common line costs, subject to a ceiling of five times $9.00, adjusted annually for inflation. Similarly, the record shows that the NTS loop costs of BRI ISDN service, excluding NTS switching costs, when rounded to the nearest half SLC, reflect a 1:1 cost ratio relative to the NTS loop costs of single-channel analog service. Therefore, we here amend our rules to provide for a SLC rate for BRI ISDN service equal to the incumbent LEC's average per-line interstate-allocated common line costs, subject to the same ceilings otherwise applicable to non-primary residential lines. Thus, beginning January 1, 1998, the SLC ceiling for BRI ISDN service will be set at the lesser of the incumbent LEC's average per-line interstate-allocated costs, or $5.00. Each subsequent year, beginning January 1, 1999, the SLC ceiling will be adjusted for inflation and increased by $1.00 per line, until the ceiling equals that permitted for multi-line business lines.

117. The cost data submitted by the BOCs in response to our request for information includes information about all NTS cost components, including components located in the central office, such as line cards and trunk cards. The data confirm that line cards and trunk cards for PRI ISDN service in particular constitute a significant portion of the total NTS costs that are dedicated to the provision of service to the subscriber, and that ISDN line cards and trunk cards are many times more expensive than the cards used for standard analog service. As discussed in Section III.B, below, LECs will be required to recover the difference between the cost of an ISDN line card and the cost of a line card used for basic, analog service through a separate charge assessed directly on ISDN end users. For purposes of determining the rate levels for ISDN SLCs, therefore, we considered only the NTS loop costs associated with providing ISDN service.

118. As with other non-primary residential and multi-line business lines, incumbent price cap LECs may assess flat-rated PICCs on ISDN service to the extent necessary to recover the shortfall of common line revenues caused by SLC ceilings. Incumbent price cap LECs are permitted to assess one PICC for BRI ISDN service and five PICCs for PRI ISDN service. It is necessary for incumbent LECs to be able to assess up to five PICCs on PRI ISDN service because, as discussed above, the record indicates that the NTS loop costs of providing PRI ISDN service, excluding switching costs, reflect a cost ratio of approximately 5:1 compared to NTS loop costs of single-channel analog service. Because the PICC recovers NTS common line costs not recovered through the SLC, prohibiting incumbent LECs from charging as many as five PICCs for PRI ISDN service could prevent them from recovering the common line costs associated with providing PRI ISDN service in cases where the common line costs exceed the SLC ceiling.

119. Incumbent LECs shall assess PICCs on BRI and PRI ISDN services in conjunction with those on the non-primary residential and multi-line business lines. For the first year, the BRI ISDN PICC will be capped at $1.50 per month, and the PRI ISDN PICC will be capped at $2.75 per month. Each subsequent year these two PICCs shall increase by no more than an inflation adjustment, plus $1.00 and $1.50, respectively.

120. The record does not contain sufficient information to enable us to determine the relative NTS costs of derived channel services other than ISDN. We therefore limit our decision to BRI and PRI ISDN service. We agree with NYNEX that we should not apply the rules we adopt here regarding SLCs when the LEC uses derived channel technology but the end user has not requested derived channel service. Unless a subscriber orders ISDN or another service that requires derived channel technology, we see no reason to vary from our general rule that the incumbent LEC should charge one SLC for each channel regardless of how it is provisioned.

121. We are not persuaded by PacTel's argument that ISDN service is not an interstate service and should not, therefore, be regulated by the Commission. ISDN lines are not directly assigned to the intrastate jurisdiction, but are treated as common lines. The Commission's jurisdiction thus includes the interstate-allocated portion of the costs of the ISDN lines. The rules we adopt in this order govern only the manner in which LECs recover the

interstate-allocated common line costs associated with providing ISDN service.

122. Before the Commission initiated CC Docket No. 95–72, Bell Atlantic, Pacific Bell, GTE, Cincinnati Bell, U S West, and Bellsouth sought waivers of Section 69.104 of the Commission's rules as it applies to ISDN service. In their petitions, these LECs urged the Commission to amend its rules regarding the application of SLCs to ISDN service. We have amended our rules regarding the application of SLCs to ISDN service. We therefore dismiss the waiver petitions of Bell Atlantic, Pacific Bell, GTE, Cincinnati Bell, U S West, and Bellsouth on the grounds that they are moot.

B. Local Switching

1. Non-Traffic Sensitive Charges

a. Background

123. The local switch connects subscriber lines both with other local subscriber lines and with interoffice dedicated and common trunks. A local switch consists of (1) an analog or digital switching system; and (2) line and trunk cards, which connect subscriber lines and interoffice trunks, respectively, to the switch. Because all of this equipment is deployed within the central office, all of its costs are assigned to the central office switching accounts of the Commission's Uniform System of Accounts and to the local switching category of central office expenses for jurisdictional separations purposes. 47 CFR §§ 32.2001(j), 36.125. The interstate portion of these costs is currently recovered through per-minute local switching charges levied on IXCs. 47 CFR § 69.106.

124. In the NPRM, we observed that a significant portion of local switching costs may not vary with usage. For example, the cost of line cards or line-side ports appears to vary with the number of loops connected to the switch, not with the level of traffic over the loops. We tentatively concluded that LECs should not recover these costs through per-minute charges. Instead, we tentatively concluded that it is more reasonable and economically efficient to recover costs of equipment dedicated to individual customers, such as line-side ports and trunk ports associated with dedicated transport, through flat-rated charges. Trunk-side ports not associated with dedicated transport and the central processing portion of the switch, on the other hand, are shared among multiple carriers. We asked if these costs are driven by usage or by the number of lines and trunks served by the switch. We sought comment on whether rate structures for shared local switching facilities should consist of usage-sensitive, flat-rated, or a combination of both flat-rated and usage-sensitive rate elements. We asked commenters to recommend methods of identifying non-traffic-sensitive (NTS) local switching costs.

b. Discussion

125. We conclude that, consistent with principles of cost-causation and economic efficiency, NTS costs associated with local switching should be recovered on a flat-rated, rather than usage sensitive, basis. The record before us indicates clearly that the costs of the line side port (including the line card, protector, and main distribution frame) are NTS. We conclude, therefore, that these costs should be recovered through flat-rated charges. Accordingly, for price-cap LECs, we reassign all line-side port costs from the Local Switching rate element to the Common Line rate elements. For price cap companies, these costs will be recovered through the common line rate elements, including the SLC and flat-rated PICC, described above.

126. LECs incur differing costs for line ports used in the provision of different services. The SLC and PICC cost recovery mechanisms will recover only the cost of a line port used to provide basic, analog service, whether the end user has basic, analog service, or another form of service. As discussed above, data submitted in response to the *ISDN SLC NPRM* show that ISDN line cards cost significantly more than line cards associated with a basic, analog, subscriber line. To the extent that the costs of ISDN line ports, and line ports associated with other services, exceed the costs of a port used for basic, analog service, price cap LECs will recover this excess amount through a separate end-user charge.

127. We conclude that the costs of a dedicated trunk port (including the trunk card and DS1/voice-grade multiplexers, if needed) should be recovered on a flat-rated basis because these costs are also NTS in nature. These costs should be recovered from the carrier purchasing the dedicated trunk terminated by that port. Similarly, we conclude that the costs of shared trunk ports should be recovered on a per-minute of use basis from the users of common transport trunks. We therefore establish two separate rate elements for recovery of these costs. Price cap LECs may recover the costs of each dedicated trunk port on a flat-rated basis from the purchaser of the dedicated trunk terminating at the port. In order to ensure that these purchasers of dedicated trunks do not pay the costs of shared trunk ports that they do not use, price cap LECs must also establish a usage-sensitive rate element for recovery of the costs of shared trunk ports. The costs of these shared trunk ports will be recovered on a per minute-of-use basis from users of common transport trunks terminating at these ports. We therefore add a separate category for all trunk port costs within the traffic sensitive basket, 47 CFR § 61.42(e)(1). As with the other categories within this basket, the ''trunk ports'' category will have an upper service band index of +5 percent and no lower service band index.

128. We do not establish a fixed percentage of local switching costs that incumbent LECs must reassign to the Common Line basket or newly created Trunk Cards and Ports service category as NTS costs. In light of the widely varying estimates in the record, we conclude that the NTS portion of local switching costs likely varies among LEC switches. Accordingly, we require each price cap LEC to conduct a cost study to determine the geographically-averaged portion of local switching costs that is attributable to the line-side ports, as defined above, and to dedicated trunk side ports. These amounts, including cost support, should be reflected in the access charge elements filed in the LEC's access tariff effective January 1, 1998. Once established, this service category, like all others in the traffic sensitive basket, shall be subject to price cap adjustments for inflation and productivity. Although some LECs have obtained authority to geographically deaverage transport rates under a zone density pricing plan, because the costs of trunk ports will remain within the Traffic Sensitive basket, we conclude that trunk port costs should remain geographically averaged for now. We will consider deaveraging of these costs in connection with our assessment of other forms of pricing flexibility in a subsequent Order in this proceeding.

129. We direct all price cap LECs to include in their tariff filings implementing this Order an exogenous downward adjustment to the Traffic Sensitive basket, 47 CFR § 61.42(d)(2), and corresponding exogenous upward adjustment to the Common Line Interstate Access Elements basket, 47 CFR § 61.42(d)(1) to reflect the recovery of the interstate NTS costs of line-side ports from the Common Line rate elements.

130. USTA, SNET, and BA/NYNEX argue that we should not codify any specific local switching rate elements. We disagree. In the NPRM, we proposed to eliminate local switching rate

elements only when an actual competitive presence is established for an exchange access service in a relevant geographic area, as measured by (1) demonstrated presence of competition; (2) full implementation of competitively neutral universal service support mechanisms; and (3) credible and timely enforcement of pro-competitive rules. We tentatively concluded in the NPRM that, in the absence of actual competition, the mere availability of unbundled network elements under efficient rate structures would not provide incumbent LECs with sufficient incentive to adopt efficient, cost-causative access rate elements or structures. The record before us indicates that flat-rated pricing for line ports and dedicated trunk ports is efficient, and reflective of cost causation. We will first amend the baseline switched access rate structure to reflect this determination. Then, in a subsequent Report and Order in this docket, we will determine when and under what circumstances we will allow incumbent LECs greater flexibility in designing interstate access rate structures.

131. In addition, despite arguments from BA/NYNEX to the contrary, we find that the benefits to be gained from a more efficient, cost-causative rate structure outweigh the burden of establishing these flat-rate elements. Independent estimates from Cable & Wireless and USTA, both using NYNEX data, indicate that as much as, or even more than, half of local switching costs may be NTS. Since the current, per-minute rate structure for the local switch was established, digital switches have become increasingly predominant in the network. Given USTA's estimate that six percent of the costs of an analog switch and 51 percent of the costs of a digital switch are NTS, we find that local switching costs have become increasingly NTS and now warrant the creation of a NTS recovery mechanism. Including NTS local switching costs in per-minute access charges contributes significantly toward unnecessarily high per-minute long distance rates for all customers. Restructuring rates to reflect more accurately cost-causation will promote competition, reduce per-minute charges, stimulate long-distance usage, and improve the overall efficiency of the rate structure.

132. We also reject proposals to recover the entire NTS portion of local switching costs from the new universal service support mechanisms. In the *Universal Service Order,* we agreed with the Joint Board that we should establish a ''nationwide benchmark based on average revenues per line for local, discretionary, interstate and intrastate access services, and other telecommunications revenues that will be used with either a cost model or a cost study to determine the level of support carriers will receive for lines in a particular geographic area.'' We find that it would be inconsistent with the Joint Board's recommendation if we were to mandate recovery of NTS local switching costs directly from universal service support mechanisms, independent of the revenue benchmark, and the percentage of high cost support recoverable from the federal universal service mechanisms at this time.

133. In allocating costs between the intrastate and interstate jurisdictions, the Commission consults with the states through the operation of the Joint Board on Separations. *See* 47 U.S.C. sec. 410(c); Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80–286, Notice of Proposed Rulemaking and Order Establishing a Joint Board, 45 FR 41459 (June 19, 1980). It is not necessary to await action by the Joint Board on Separations before revising the recovery mechanisms applicable to the interstate portion of the costs attributed to line ports and dedicated trunk ports. Our revision of the mechanisms used to recover the interstate portion of the costs in Part 32 local switching accounts that the jurisdictional separations process allocates to the interstate jurisdiction will have no direct effect on that allocation because these costs will continue to be separated in Part 36 based on relative dial-equipment-minutes of use. The fact that local switching costs are apportioned between jurisdictions based on a relative interstate and state usage is irrelevant to the choice of pricing structure for recovering those costs, however. Economic efficiency does not require the jurisdictional separation of NTS costs be based on an NTS (flat) factor. The jurisdictional separations process only determines whether the billed charges (flat or variable) are characterized as intrastate or interstate. Economic efficiency does require that NTS costs, regardless of how they are separated, be recovered in each jurisdiction through flat charges. Thus, there was no loss of economic efficiency when the Commission, agreeing with the recommendation of the Joint Board, simplified the separation of local switching by eliminating the former distinction between NTS and traffic-sensitive costs and creating a single switching category that is assigned to the jurisdictions based on dial equipment minutes. MTS and WATS Market Structure, CC Docket No. 78–72, Report and Order, 52 FR 17228 (May 6, 1987).

134. On the other hand, economic efficiency will be increased if local switching costs (regardless of the jurisdiction to which they are assigned) are recovered through a combination of flat charges for NTS costs and traffic sensitive charges for the remainder. Because, at the time that the Commission established the current jurisdictional separations process, it did not consider the distinction between the switch and the port that we address today, the current jurisdictional separations process does not distinguish port costs from the costs of the local switch itself. 47 CFR 36.125(b). We have the authority and obligation, independent from the Joint Board, to establish appropriate rate structures for recovering the costs the jurisdictional separations process allocates to the interstate jurisdiction. *E.g.,* 47 U.S.C. secs. 151, 152, 154(i–j). We take steps today to address the fact that the costs of line ports and dedicated trunk ports are more properly recovered for Part 69 purposes from the Common Line and Direct-Trunked Transport rate elements as NTS charges, instead of from the traffic sensitive Local Switching element. We will, however, examine any jurisdictional separations issues presented by NTS switching costs in our upcoming separations Notice of Proposed Rulemaking.

135. Costs may vary for shared local switching facilities according to the number of lines connected, or the traffic over those lines. In the former case, the costs of the shared facility may be recovered in the most cost-causative manner by imposing a proportionate share of the costs on each line while, in the latter case, usage-sensitive charges may better reflect cost causation. With respect to such shared local switching facilities, including the switching matrix and shared trunk ports, we gave states flexibility in our interconnection proceeding to establish either per-minute usage charges, or flat-rated charges, as appropriate. *Local Competition Order.* In the access context, however, we will continue to require price cap incumbent LECs to recover the costs of shared local switching facilities, including the central processor, switching matrix, and shared trunk ports, on a per-minute basis. On the basis of the information in the record before us, it would be difficult to identify the NTS and traffic-sensitive portions of the costs of shared switching facilities and to verify the accuracy of LEC studies attempting to do so. Therefore, until we gain more

experience with rate structures for unbundled network elements that are implemented pursuant to Sections 251 and 252 and that segregate these costs into traffic-sensitive and NTS components, we will continue to adhere to the current, per-minute rate structure for shared switching facilities.

2. Traffic Sensitive Charges

136. In the NPRM, we sought comment on several alternative rate structures for recovery of usage-sensitive local switching costs. Specifically, we sought comment on whether the Commission should require or permit LECs to establish a separate charge for call setup, and if so, whether the charge should be levied on all call attempts, or only completed calls. We also sought comment on whether the Commission should require or permit incumbent LECs to establish peak and off-peak pricing structures for shared local switching facilities, and whether the existing per-minute rate structure adequately reflects the manner in which traffic-sensitive local switching costs are incurred.

a. Call Setup Charges

137. Among price cap carriers today, most call setup is performed with out-of-band signalling, generally using the SS7 signalling network. In light of the widely varying estimates of the costs of call setup in the record, we conclude that these costs may be more than a de minimis portion of the costs of local switching. The record indicates that these call setup charges are incurred primarily on a per-call rather than a per-minute basis. By requiring recovery the costs of call setup on a per-minute basis, our current rate structure mandates an implicit subsidy running from customers that make lengthy calls to those that make many short-duration calls. Therefore, we find that we should not continue to require the price cap LECs to recover costs of call setup from per-minute local switching charges.

138. Accordingly, we will revise Section 69.106 of our rules, 47 CFR § 69.106, to permit, but not to require, price cap LECs to establish a separate per-call setup charge assessed on IXCs for all calls handed off to the IXC's point of presence (POP). As noted earlier, because an incumbent LEC originating an interstate call incurs call setup costs even if the call is not completed at the called location, we permit these LECs to recover call setup charges on all originating interstate calls that are handed off to the IXC's POP, and on all terminating calls that are received from an IXC's POP. With respect to originating call attempts, we agree with the California Commission that, when the call is handed off to the IXC's POP, the incumbent LEC's switches and signalling network have performed their functions and the incumbent LEC has incurred the full cost of call setup. We also permit incumbent LECs to impose a setup charge for terminating calls received from an IXC's POP, whether or not that call is completed at the called location, because the incumbent LEC signalling network in either case must perform its setup function.

139. We conclude that the call setup charge should not be mandatory because some incumbent LECs may determine that call setup costs either are in fact de minimis or are otherwise outweighed by the costs of the network and operations support systems (OSS) upgrades necessary to install measurement and billing systems. In such cases, it would be economically inefficient to mandate a separate call-setup charge because the costs of collecting the charge might exceed the revenue collected from the charge itself. We are aware that, by making the call-setup charge permissive only, we may allow certain incumbent LECs' rate structures to continue to subsidize short-duration calls. We nevertheless conclude that we should not mandate separate collection of a call-setup charge in cases where the LEC determines that the costs of eliminating this subsidy exceed the benefits to be gained. In contrast, we find that those incumbent LECs that either have or obtain the ability to implement a call-setup charge should have the flexibility to adopt this cost-causative rate structure.

140. No party disputes the fact that incumbent LECs incur costs of call setup for call attempts, in addition to completed calls. Some parties, however, argue that call setup charges should be assessed only on completed calls in order to reduce customer confusion. We anticipate that consumer confusion will be minimal, however, because the call setup charge we permit will be imposed on IXCs, not end users. We find it unlikely that IXCs would choose to pass this charge along to their customers in the form of a separate charge per call attempt. For instance, IXCs today generally charge their customers for completed long distance calls even though they incur access charges for many uncompleted calls as well.

141. Other commenters state that setup charges imposed on call attempts will result in charges being imposed on a caller that has not received service. LCI asserts that ''customers do not expect to pay for uncompleted call attempts, and the carriers are not entitled to recover their costs of uncompleted call attempts,'' citing the Commission's decision in *VIA USA, Ltd,* 10 FCC Rcd 9540, 9545 (1995). The text cited from that order, however, addresses only customer expectations that have arisen because our current rules make no explicit provision for the recovery of costs of an uncompleted call. We now find that a call setup charge, assessed to an IXC, should not be prohibited because a rate structure that recovers some switching costs through a per-call setup charge on all call attempts is more cost-causative than one limited to the recovery of costs only from completed calls.

142. Still other commenters argue that, if we permit call setup charges to be imposed for call attempts, we will, at best, open the door to unauditable billing errors or, at worst, facilitate incumbent LEC fraud and duplicity. These commenters argue that the incumbent LEC will be able to generate additional revenue, or degrade the service of IXC competitors, by blocking calls at its own switch. Based on this record, we conclude that these concerns are not well-founded. By permitting a setup charge only for originating call attempts that are handed off to the IXC's POP, we minimize the originating incumbent LEC's incentive to engage in this type of activity because the incumbent LEC will receive no compensation for calls blocked at its own switch. In addition, incumbent LECs have compelling incentives to deliver interstate calls to an IXC's POP. As competition develops for local service, it appears doubtful that an incumbent LEC would find it advantageous to block deliberately interstate calls placed by their end user customers. Such practices would encourage entry by new competitors and increase the interest of affected end users in finding a more reliable service provider. We also find it unlikely that either originating or terminating incumbent LECs would intentionally risk the collection of often significant per-minute access charge revenues on a completed long-distance call in order to collect additional, much smaller per-call setup charges. Finally, we know of no significant allegations of degraded service quality attributable to the very similar current regime, under which incumbent LECs collect at least a full minute of originating access revenues on uncompleted calls delivered to the IXC's POP. We are prepared, however, to investigate claims that an incumbent LEC is blocking calls in an intentional or discriminatory manner.

143. Several large business customers that make substantial numbers of short-duration calls, such as those associated

with credit card authorization, automatic teller machine operation, or other transaction-oriented data transfers, argue that imposing a call setup charge will be disruptive to their businesses and may force them to use alternatives to the public switched network. These commenters are the primary beneficiaries of the subsidy that is implicit in the current recovery of call setup costs on a per-minute basis, running from customers that make lengthy calls to those that make many short-duration calls. The existing rate structure may well have encouraged users who make many short duration calls to use the public-switched network in inefficient ways. Rate structures that are aligned with cost causation, on the other hand, should encourage economically-efficient use of the telecommunications network. Transaction-oriented users of the network may be motivated to develop more economically efficient processing methods, with resulting economic benefits. Because this group of IXC customers may need time to adjust to the new rate structure, however, incumbent LECs choosing to impose a per-call setup charge on IXCs may do so, at the earliest, in their access tariff filings effective July 1, 1998. This gives a customer over one year to make any necessary adjustments. This time should be sufficient to mitigate any potential disruptive effects of this rate structure change.

144. MCI asserts that there may be costs of call setup in addition to those associated with signalling, such as a portion of the switch central processor costs. We limit the costs that an incumbent LEC may recover through call setup charges, however, to those associated with signalling because we agree with MCI that it would be extremely difficult to separate the costs of the switch CPU and other traffic-sensitive costs into per-message and per-minute portions and to verify that the allocation has been done properly.

145. Several commenters caution that, if we permit a call setup charge, we should also ensure that the charge does not overlap with any SS7-related charges now permitted or developed in this proceeding. Because call setup is one function of the SS7 network, some of these costs may already be recovered through the current Part 69 SS7 rate elements. 47 CFR § 125. Currently, Section 69.125 of our rules permits LECs to recover from IXCs only (1) a flat-rated signalling link charge for the Dedicated Network Access Line (DNAL); and (2) a flat rated Signal Transfer Point (STP) port termination charge. 47 CFR § 69.125. While these elements recover the costs of some dedicated SS7 facilities, they do not include the usage-based signalling costs of call setup, including the costs incurred to switch messages at the local STP, to transmit messages between an STP and the incumbent LEC's end office or tandem switch, and to process or formulate signal information at an end office or tandem switch.

146. Currently, the setup costs of certain calls may be recovered through database query charges, either for the line information database (LIDB), 47 CFR § 69.120, or the 800 database, 47 CFR § 69.118. In addition, incumbent LECs recover some costs associated with the provision of certain signalling information necessary for third parties to offer tandem switching through the ''signalling for tandem switching'' rate element, 47 CFR § 129.

147. Imposing a call setup charge for interexchange calls should not overlap with any of these existing rate elements. Nevertheless, we clarify that an incumbent LEC choosing to impose a call setup charge may not include in that charge any costs that it continues to recover either through other local switching charges, through charges for dedicated SS7 facilities, or through other signalling charges. In this Order, we also permit incumbent LECs to adopt a more detailed SS7 rate structure, modeled on that currently used by Ameritech under waiver. *Ameritech SS7 Waiver Order.* This SS7 rate structure may permit LECs to recover a significant portion of their call setup costs without an additional call setup charge. Given estimates in the record that SS7 is used to provide signalling for more than 95 percent of the large LECs' customers, we conclude that, in the ordinary case, a price cap LEC will not need to use both the optional SS7 rate structure and a separate call setup charge to recover the costs of call setup. We recognize, however, that some call setup is still performed using in-band, multifrequency (MF) signalling, rather than out-of-band signalling systems. Because SS7 charges will not recover costs of call setup using MF signalling, we do not prohibit the use of both SS7 and call setup charges. We caution LECs adopting both the optional SS7 rate structure and an additional call setup charge, however, that cost support filed with access tariffs must clearly indicate the allocation of individual costs of call setup between these two recovery mechanisms; the same costs cannot be double-recovered using both mechanisms.

b. Peak and Off-Peak Pricing

148. We conclude that we should not now mandate a peak-rate pricing structure for local switching. The record reflects significant practical difficulties that may make it difficult or impossible to establish and enforce a rational, efficient, and fair peak-rate structure as a matter of regulation. For example, the record outlines a variety of difficulties that incumbent LECs will confront in determining peak and off-peak hours with any degree of certainty, based on geographic, user-type, service, and other variations. Moreover, peak usage periods may shift over time as usage patterns change, and as competitors enter the market. Based on these difficulties, some incumbent LECs may find it too costly or too difficult to develop, implement, and maintain a peak-rate structure that will allow them to capture all or most of the benefits this structure could offer.

149. We do recognize the possible efficiency of a peak-rate structure. *Local Competition Order.* Accordingly, we will consider whether LECs should have the flexibility to develop such peak and off-peak rate structures for local switching on a permissive basis when we consider other issues of rate structure flexibility in a subsequent Report and Order that we will adopt in this proceeding.

C. Transport

150. Transport service is the component of interstate switched access consisting of transmission between the IXC's point of presence (POP) and LEC end offices. Transport Rate Structure and Pricing, CC Docket No. 91–213, Third Memorandum Opinion and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking, 60 FR 2068, (January 6, 1995) (*Third Transport Reconsideration Order*). Currently, incumbent LECs offer two basic types of interoffice transport services. The first, direct-trunked transport, uses dedicated circuits for transport between a LEC end office and the LEC serving wire center, or between any other two points the direct-trunked transport customer requests. The second, tandem switched transport, uses common transport facilities to connect the end office to a tandem switch. Common transport circuits may be used to transmit the individual calls of many IXCs and even the incumbent LEC itself. Transport circuits dedicated to a particular access customer connect the tandem switch to the serving wire center. Dedicated entrance circuits carry traffic between the IXC POP and the serving wire center, whether the IXC uses direct-

trunked transport or tandem-switched transport.

151. In the NPRM, we expressed concern that some of our current Part 69 rules, *see, e.g.,* 47 CFR §§ 69.110, 69,111, 69.112, 69.124, may require LECs to recover transport costs through rate structures that do not reflect accurately the way these costs are incurred. We sought comment on possible revisions to many of these rate elements.

1. Entrance Facilities and Direct-Trunked Transport

a. Background

152. Entrance facilities are dedicated circuits that connect an access customer's POP with the LEC's serving wire center. Direct-trunked transport facilities are dedicated trunks that carry an access customer's traffic from the LEC end office to the serving wire center without switching at the tandem switch. In the *First Transport Order,* we mandated an interim rate structure under which entrance facilities and direct trunked transport are priced on a flat-rated basis, which may be distance sensitive. Transport Rate Structure and Pricing, CC Docket No. 91–213, Report and Order and Further Notice of Proposed Rulemaking, 57 FR 54717 (November 20, 1992) (*First Transport Order*); *see also* 47 CFR § 69.110. Initial rate levels for direct-trunked transport and entrance facilities were presumed reasonable if they were set equal to the rates for corresponding special access service components (special access service and special access channel termination, respectively). Transport Rate Structure and Pricing, CC Docket No. 91–213, First Memorandum Opinion and Order on Reconsideration, 58 FR 41184, (August 3, 1993) (*First Transport Reconsideration Order*). In the NPRM, we tentatively concluded that, because direct-trunked transport and entrance facilities appear to be dedicated to individual customers, a flat-rated pricing structure accurately reflected the way LECs incur the costs of these facilities. We sought comment on this tentative conclusion and on whether incumbent LECs should be permitted to offer transport services differentiated by whether the LEC or the IXC is responsible for channel facility assignments (CFAs). A channel facility assignment is the actual designation of the routing that a circuit takes within the incumbent LEC network. This assignment may be made either by an IXC purchasing a dedicated circuit, or the incumbent LEC itself. We also sought comment on whether any rules in addition to the interim rules are necessary to govern rate levels for these services.

b. Discussion

153. We conclude that both entrance facilities and direct-trunked transport services should continue to be priced on a flat-rated basis and that charges for these services may be distance-sensitive. In the *First Transport Order,* we found that such a flat charge would facilitate competition in the direct-trunked transport market and encourage incumbent LECs to make efficient network decisions. For the same reasons, and because this pricing structure is reflective of the manner in which incumbent LECs incur the costs of provisioning these facilities, we confirm that the interim rate structure the Commission adopted for these facilities should be made final.

154. US West and Sprint make a persuasive showing that, as carriers expand their use of fiber-optic ring architecture and other modern network designs, transport costs should become less distance sensitive because LECs may transport a call along any one of many paths to its destination based on transient network traffic levels. We conclude, however, that we need not amend our Part 69 rules now to reflect the decreasing sensitivity of transport costs to distance. Our rules permit, but do not mandate, the use of distance sensitive transport charges. Therefore, if an incumbent LEC determines that its transport costs have become less distance sensitive, it may reduce or eliminate the distance-sensitivity of its direct-trunked transport rates. For two reasons, we expect that incumbent LECs will adjust their rates to reflect any change in the distance sensitivity of transport costs. First, as US West states, ring architecture will be most prevalent, and therefore, will reduce the distance sensitivity of rates most dramatically, in densely populated areas. When an incumbent LEC obtains authority to deaverage access rates geographically, therefore, it may choose to offer a less distance-sensitive pricing structure in more densely populated areas than it does in less densely populated areas. Such a structure would properly reflect the reduced distance sensitivity of the incumbent LEC's costs in more densely populated areas. Second, as competition develops, incumbent LECs will come under increasing market pressures to maintain rates that reflect the nature of the costs underlying the service. If they choose not to do so, we expect that new market entrants will develop competitive service offerings at prices more reflective of underlying costs.

155. We decline Ameritech's request in its comments for immediate flexibility to offer new technologies to switched access customers without obtaining a Part 69 waiver or passing a public interest test. In our Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94–1, Third Report and Order, 62 FR 4657 (January 1, 1997) (*Price Cap Performance Review Third Report and Order*), adopted along with the NPRM in this proceeding, we eliminated the need for a Part 69 waiver for new services, and instead required incumbent LECs to file a petition demonstrating that introduction of the new service would be consistent with the public interest. Such petitions will give LECs that desire to do so the opportunity to make their cases and receive the requested flexibility. *See* 47 CFR § 69.4(g). This procedure significantly streamlined the prior waiver process, and we conclude that the public interest will not suffer if we do not grant incumbent LECs additional immediate flexibility in this area as part of our basic rate structure modifications. We will give further consideration to Ameritech's request for additional flexibility to offer new technologies to switched access customers as part of our assessment of other aspects of pricing flexibility in a subsequent Report and Order in this proceeding.

156. We also will consider whether LECs should be permitted to offer direct-trunked transport services that are differentiated by whether the incumbent LEC or the transport customer is responsible for performing channel facility assignments in connection with our evaluation of other forms of pricing flexibility in a subsequent Report and Order in this proceeding. As MCI argues in its comments, it is unclear whether rates for direct-trunked transport where the LEC controls the CFA should be higher or lower than the rates that apply where the IXC controls the CFA. Although the LEC may be able to make more efficient use of its network facilities when it controls the CFAs itself, this efficiency benefit may be offset by the additional costs the LEC incurs in performing the CFA function. We agree with MCI that an incumbent LEC may be able to increase its network efficiency by retaining or assuming control of CFAs, particularly if an IXC orders a relatively large amount of transport capacity. In those cases, however, rate differentiation based on CFA control appears to be the functional equivalent of a volume discount. As a result, we will consider this issue, along with other pricing flexibility issues, in a

subsequent Report and Order planned in this docket.

157. In its comments, USTA requests that we forbear under Section 10 of the Communications Act, 47 U.S.C. sec. 160, from regulating services in the interexchange basket, special access, collocated direct-trunked transport, and directory assistance. We will address USTA's request along with other pricing flexibility issues, in a subsequent Report and Order planned in this docket.

2. Tandem-Switched Transport

a. Background

158. Tandem-switched transport uses trunks that are shared among many IXCs and the LEC itself to carry traffic between the end office and a tandem switch. The tandem switch routes IXC traffic onto an appropriate dedicated trunk that runs between the tandem switch and the serving wire center. An IXC may use tandem-switched transport either as its primary form of transport in lieu of direct-trunked transport, or to carry traffic that overflows from its direct-trunked transport facilities at peak periods. In 1982, the *Modification of Final Judgment* (*MFJ*) established an interim rule that required, until September 1, 1991, BOC charges to IXCs to be ''equal, per unit of traffic'' of a given type transported between end offices and facilities of the IXCs within an exchange area or within reasonable subzones of an exchange area. *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 233–34 (AT&T Consent Decree, Appendix B, Section B(3)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983).

159. The Commission replaced the ''equal charge'' rule in 1993 with an interim rate structure for tandem-switched transport. This interim structure allows IXCs to choose between two rate structures for the purchase of tandem-switched transport. Both options provide for a per-minute tandem switching charge. Under the first option, an IXC may elect to pay ''unitary'' per-minute charge for transmission of traffic from the end office, through the tandem switching office, to the serving wire center. This charge may be distance sensitive, with distance measured in airline miles from the end office to the serving wire center. Under the second option, the ''three-part rate structure,'' in addition to the charge for the tandem switch, an IXC may elect to purchase transmission on a bifurcated basis, with the end office-to-tandem portion charged on a per-minute basis, and the tandem-to-serving wire center portion charged as direct-trunked transport facilities, i.e., on a flat-rated basis. Under the three-part rate structure, both portions of the transmission charge may be distance sensitive based on the airline mileage to the tandem office.

160. In adopting the interim rate structure, the Commission stated that initial direct-trunked and tandem-switched transport rates would be presumed reasonable if set based on special access rates in effect on September 1, 1992, using a DS3 to DS1 rate ratio of at least 9.6 to 1. *First Transport Order.* Special access customers use a dedicated trunk running between the customer's premises and the IXC's POP, thereby bypassing the LEC's switched network facilities altogether. This service is primarily used by large volume users in densely populated areas. Per-minute tandem-switched transport rates were presumed reasonable if set using a weighted average of DS1 and DS3 rates reflecting the relative numbers of circuits of each type in use in the tandem-to-end office link, and assuming circuit loading of 9000 minutes of use per month per voice-grade circuit. *Id.*

161. Under the interim rate structure, whether a tandem-switched transport customer elects to purchase tandem-switched transport under the unitary or the three-part rate structure, the LEC imposes a separate, per-minute charge on the tandem-switched transport customer for use of the tandem switch. The Commission set this charge initially to recover only twenty percent of the tandem revenue requirement, in order to: (1) protect small IXCs that use tandem-switched transport as their primary transport mechanism from substantial increases in tandem-switched transport rates, *see Competitive Telecommunications Ass'n* v. *FCC,* 87 F.3d 522, 526–27 (D.C. Cir. 1996) (*CompTel*); (2) ensure that the interim rate structure did not ''endanger the availability of pluralistic supply in the interexchange market'' that had developed under the equal charge rule, *First Transport Order;* and (3) allow IXCs a transitional period to reconfigure their networks to eliminate inefficiencies that had developed under the equal charge rule and to prepare for a fully cost-based rate structure, *id.* Unlike the direct-trunked and tandem-switched transport rates, which are set using overhead loadings based on special access, the tandem switching rates used higher overhead loadings applicable to switched access.

162. As part of the interim rate structure, the Commission also created the TIC to recover on a per-minute basis from all switched access customers the difference between the Part 69 transport revenue requirement and the revenues projected to be recovered under the interim rate structure. *Id.* The TIC was explicitly intended to make the transition to the interim rate structure revenue neutral. *Id.* Among other possible costs, the TIC recovers the remaining 80 percent of the tandem-switching revenue requirement.

163. Portions of the interim transport rate structure were recently remanded to the Commission by the United States Court of Appeals for the District of Columbia Circuit, *CompTel,* 87 F.3d 522. With respect to tandem-switching rates and the TIC, the Court ordered us either to implement a cost-based rate structure or offer a ''rational and non-conclusory analysis in support of [our] determination that an alternative structure is preferable.'' *Id.* at 736. With respect to overhead loadings, the Court ordered us either to substantiate that our current method of allocating overhead is cost-based, choose a method that is, or provide a reasoned explanation of our decision to pursue a non-cost-based system. *Id.*

164. In the NPRM, we sought comment on several alternative rate structures for tandem-switched transport service facilities, including: (a) maintaining the interim rate structure, which permits the IXCs to choose between the two pricing alternatives above; (b) eliminating the unitary rate option and requiring the IXCs to purchase tandem-switched transport under the three-part rate structure; or (c) developing another, different rate structure. We also sought comment on whether, in conjunction with any of these pricing options, we should apply to tandem switching any of the options for local switching discussed above, including whether we should establish separate flat-rated charges for the dedicated ports on the serving wire center side of the tandem or other NTS components of the tandem switch, and whether usage-based or flat rates more accurately reflect shared tandem-switching costs. We also sought comment on whether, in conjunction with any of these options, we should permit or require peak load pricing for usage-based charges for tandem-switched transport service, and on whether any portion of tandem-switched transport costs should be recovered from direct-trunked transport customers.

b. Overview of Rate Structure and Rate Level Changes

165. In this section, we summarize the changes we make to the tandem-switched transport rate structure and rate levels below. We conclude that we

should require incumbent LECs to implement a cost-based rate structure for tandem-switched transport in four stages over a two year transition period. Unlike our previous transition plans, however, we set forth today, for the first time, the details of a final, cost-based transport rate structure. We have long recognized that non-cost based rate structures can, among other dangers, (1) threaten the long-term viability of the nations's telephone systems; (2) distort the decision whether to use alternative telecommunications technologies; and (3) encourage ''uneconomic bypass'' of the public switched telecommunications network, raising rates for all. *MTS and WATS Market Structure Third Report and Order.*

166. Until today, however, we have limited ourselves to interim transport rate structure plans, such as the equal charge rule and the interim rate structure described above. While the interim rate structure increased the cost-based nature of our transport rate structure, it also included significant non-cost-based elements. We have not, until today, laid out a clear transition plan that describes all the steps necessary to achieve cost-based transport rates. As a result, although all carriers have no doubt been aware of our intention to move to a cost-based rate structure, they have been able only to react to our transitional steps, announced piecemeal. Because we have not announced a definite and detailed end state—a final, cost-based rate structure—we have afforded carriers little opportunity to plan, adjust, and develop their networks in preparation for such a rate structure, despite our lengthy period of ''transition.'' Accordingly, because of the potential magnitude of the rate impact of these changes, we conclude that a four-step implementation over a two-year period will minimize the risk of rate shock and allow transport customers to adjust while we move as expeditiously as possible to cost-based transport rates as required by the *CompTel* decision.

167. The first step will occur in incumbent LEC access tariffs to become effective on January 1, 1998. In those tariffs, incumbent price cap LECs must establish new rate elements for recovery of the costs of DS3/DS1 and DS1/voice-grade multiplexers used in conjunction with the tandem switch. The rate element for the dedicated multiplexers on the serving wire center side of the tandem will recover these costs on a flat-rated basis, while the rate element for the multiplexers on the end office side of the tandem will be assessed per minute of use. In addition, incumbent price cap LECs must establish in those tariffs a flat-rated charge to recover the costs of dedicated trunk ports on the serving wire center side of the tandem. None of our existing rate elements currently recovers the costs of either these multiplexers or these dedicated trunk ports. Accordingly, we conclude that those costs are currently recovered through the TIC, and that incumbent price cap LECs must reduce the TIC to reflect the recovery of these costs through the new rate elements. Also on January 1, 1998, all incumbent LECs must take the first of three annual steps to reallocate to the tandem-switching rate element tandem switching revenues currently being recovered through the TIC. In tariffs filed to be effective on that date, we require incumbent LECs to reallocate one third of the portion of the tandem switching revenue requirement that they currently recover through the TIC, excluding signalling and dedicated port costs that we reallocate elsewhere, to the tandem switching rate element.

168. The second step will occur in incumbent LEC tariffs to become effective July 1, 1998. At that time, all incumbent LECs must eliminate the unitary pricing option for tandem switched transport. Instead, incumbent LECs will be required to provide tandem-switched transport under a three-part rate structure as follows: (1) a per-minute charge for transport of traffic over common transport facilities between the LEC end office and the tandem office; (2) a per-minute tandem switching charge; and (3) a flat-rated charge for transport of traffic over dedicated transport facilities between the serving wire center and the tandem switching office. Incumbent LECs will continue to impose separate multiplexing and port charges established on January 1, 1998, as complementary to the three-part rate structure.

169. The third and fourth steps will consist of the reallocation of the remaining portion of the tandem-switching revenue requirement currently recovered through the TIC to the tandem-switching rate element. All incumbent LECs are to reallocate one half of the remaining portion of tandem-switching revenue requirement recovered through the TIC to the tandem-switching rate element in access tariffs to become effective January 1, 1999, and the final portion of the tandem-switching revenue requirement to the tandem-switching rate element in access tariffs to become effective on January 1, 2000. Before performing this reallocation, price cap incumbent LECs must account for X-factor reductions to the tandem-switching revenues permitted under price caps that have occurred since the TIC was created, as described in Section III.C.2.d, below.

c. Rate Structure

170. *Multiplexing Costs.* As discussed above, we direct incumbent LECs to establish separate rate elements for the multiplexing equipment on each side of the tandem switch. LECs must establish a flat-rated charge for DS1/DS3 multiplexers on the serving wire center side of the tandem, imposed pro-rata on the purchasers of dedicated DS3 trunks on the serving wire center side of the tandem, in proportion to the amount of DS3 trunking capacity purchased by each customer. Unlike DS3 rates, rates for DS1 dedicated trunks already include a portion of the DS1/DS3 multiplexer needed for transport. *First Transport Order.* Multiplexing equipment on the end office side of the tandem shall be charged to users of common end office-to-tandem transport on a per-minute of use basis. These multiplexer rate elements must be included in the LEC access tariff filings to be effective January 1, 1998.

171. We sought comment in the NPRM on the claim that:

> The TIC * * * includes the two additional multiplexers needed in order to multiplex a DS3 circuit down to a DS1 level before switching at the tandem, and then back up to DS3 afterward for transmission to an end office. To the extent that analog tandem switches exist, two additional DS1/[voice-grade] multiplexers are needed to achieve the voice-grade interface with the tandem switch.

None of our existing rate elements explicitly recovers the costs of these multiplexers, and we conclude that these costs are currently recovered as part of the TIC. Accordingly, we establish two rate elements for multiplexers used on the serving wire center side of the tandem switch. The first will recover the costs of DS3/DS1 multiplexers used by purchasers of dedicated DS3 transport trunks from the serving wire center to the tandem switch, and may be levied only on purchasers of such DS3 transport. The second will recover the costs of DS1/voice-grade multiplexers used on the serving wire center side of analog tandem switches, and should be levied on purchasers of DS1 or greater capacity dedicated transport from the tandem switch to the serving wire center in proportion to the transport capacity purchased on that route. Like serving wire center-side trunks and trunk ports, both DS3/DS1 and DS1/voice-grade multiplexers on the serving wire center side of the tandem switch are dedicated to individual customers. Accordingly, flat-rated NTS charges for these multiplexers are appropriate.

172. On the end office side of the tandem switch, we establish two additional rate elements. The first will recover the costs of DS3/DS1 multiplexers used on the end office side of the tandem switch. This rate element will be a per-minute charge imposed on each IXC purchasing common transport on the end office-to-tandem link. This charge will be calculated based on actual minutes of use of the common transport circuits and will be assessed on IXCs in a 1:1 ratio with minutes of use of common transport. As with common transport trunks, because these multiplexers are shared among all users of common transport, traffic-sensitive, per-minute charges are appropriate. The second rate element should be assessed only at analog tandems, to recover in a similar manner the costs of DS1/voice-grade multiplexers needed at these analog tandems.

173. Price cap LECs must reallocate revenues currently being recovered through the TIC to these rate elements and begin recovery of multiplexing costs using these rate elements in their access tariffs to become effective January 1, 1998.

174. *Dedicated Tandem Switch Trunk Port Costs.* Price cap incumbent LECs must establish a separate rate element for dedicated trunk ports used to terminate dedicated trunks on the serving wire center side of the tandem switch. LECs incur the costs of these ports on an NTS basis, but currently must recover their costs through per-minute charges for the tandem switch. Because we have allocated 80 percent of tandem-switching costs to the TIC, these port costs may currently be recovered through either per-minute tandem-switching charges, or the per-minute TIC. We now take this opportunity to establish a separate rate element for these costs. Price cap LECs must establish a flat-rated element for dedicated trunk ports on the serving wire center side of the tandem, assessed on the purchaser of the dedicated trunk terminated at that port. This rate element shall be a flat-rated charge assessed on the carrier purchasing the dedicated trunk terminated at that port, and must also be included in tariff filings to become effective January 1, 1998.

175. *Three-Part Rate Structure.* We also direct all incumbent LECs to discontinue the unitary rate structure option for the transmission component of tandem-switched transport, effective July 1, 1998. In their access tariffs that take effect on July 1, 1998, incumbent LECs will be required to provide tandem-switched transport under a three-part rate structure as follows: (1) a per-minute charge for transport of traffic over common transport facilities between the LEC end office and the tandem office; (2) a per-minute tandem switching charge; and (3) a flat-rated charge for transport of traffic over dedicated transport facilities between the serving wire center and the tandem switching office. This three part rate structure reflects the manner in which the incumbent LEC incurs the costs of providing each component of tandem-switched transport. By establishing a per-minute, traffic-sensitive rate for the shared common transport trunks and the tandem switch, incumbent LECs will recover these costs from each IXC in proportion to its use. The incumbent LEC, in contrast, incurs the costs of the dedicated serving wire center-to-tandem trunk on an NTS basis because, like other dedicated trunks, the LEC must provision the trunk for the exclusive use of one IXC. Once this capacity is dedicated, the cost of the trunk does not vary with the amount of traffic transmitted by the IXC.

176. The three-part rate structure may cause some tandem-switched transport customers to increase their use of direct-trunked transport relative to tandem-switched transport. As discussed above, making this rate structure change effective on July 1, 1998, will provide tandem-switched transport customers that currently take service under the unitary rate structure with notice of this change sufficient to enable them to adjust their networks to provide service in the most efficient way possible, and to mitigate any sudden effect on rates such a change could have if implemented on shorter notice. In order to encourage transport customers to increase the efficiency of their transport networks quickly, we will require incumbent LECs to waive certain nonrecurring charges until six months after the three-part rate structure becomes mandatory. Therefore, from the effective date of this Order until six months after the effective date of tariffs eliminating the unitary pricing option for tandem-switched transport, the incumbent LECs shall not assess any nonrecurring charges for service connection when a transport customer converts trunks from tandem-switched to direct-trunked transport or orders the disconnection of overprovisioned trunks.

177. When we replaced the equal charge rule in 1991, we stated three principles that would guide our efforts to develop the transport rate structure: (1) to encourage efficient use of transport facilities by allowing pricing that reflects the way costs are incurred; (2) to avoid interference with the development of interstate access competition; and (3) to facilitate full and fair interexchange competition. *First Transport Order.* In 1991, we stated that the interim rate structure was a reasonable first step toward achieving these goals, because it was more cost-based than the equal charge rule. *First Transport Order.* Even from its inception, however, we have recognized that the interim rate structure represents significant compromises that cause it to fall substantially short of these goals in many ways. *See First Transport Order; Third Transport Reconsideration Order.*

178. First, the unitary rate option does not accurately reflect the manner in which LECs incur costs in providing tandem-switched transport and, therefore, does not provide maximum incentive for IXCs to use transport facilities efficiently. IXCs may order, and LECs must provide, dedicated transport links with NTS costs on the serving wire center-to-tandem route with no assurance that the traffic-sensitive, per-minute revenues collected will cover the NTS costs of the link. As we stated at the time, the unitary rate structure was intended as an interim measure to allow IXCs time to prepare for a fully cost-based transport rate structure. *Third Transport Reconsideration Order.* IXCs have now had well over a decade since divestiture to so prepare. We agree with the *CompTel* decision that it is time to bring this period of preparation to a close as expeditiously as possible without causing severe disruption to carriers. *CompTel,* 87 F.3d at 530.

179. Second, by bundling the dedicated and common portions of the transmission component of tandem-switched transport into a single, end-to-end per-minute charge, the unitary rate structure inhibits the development of competitive alternatives to incumbent LEC tandem-switched transport. While we have required incumbent LECs to provide the collocation, signalling, and unbundled network elements necessary for new entrants to compete with incumbent LECs without having to replicate the incumbent LEC's interoffice transport network, *see Local Competition Order;* Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141, Memorandum Opinion and Order, 59 FR 38922 (August 1, 1994); Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141, Transport Phase II, Third Report and Order, 59 FR 32925 (June 27, 1994), we have not corrected the non-cost based aspects of our tandem-switched transport rate structure that reduce incumbent LEC

rates for tandem-switched transport services. Several commenters have noted that the tandem-switched transport market, despite our efforts, is subject only to limited competition. Moreover, several competitive entrants have stated that they have the capability and desire to offer some or all of the components of tandem-switched transport on a competitive basis, but that the present, unitary rate structure inhibits the development of competition in this area. In addition, each component of tandem-switched transport is not equally susceptible to competitive entry; it is relatively easier for a new entrant to compete to provide the dedicated serving wire center-to-tandem link than it would be to compete to provide either the tandem switch itself or the myriad common transport end office-to-tandem links. Thus, in order to permit the fullest development of competitive alternatives to incumbent LEC networks, we need to unbundle reasonably segregable components of incumbent LEC transport services and price them in the manner in which costs are incurred.

180. Third, the interim rate structure does not best promote ''full and fair'' interexchange competition. The unitary rate structure has facilitated the growth of small IXCs to compete with larger carriers. It has achieved this, however, by requiring incumbent LECs to price facilities with NTS costs on a per-minute, traffic sensitive basis, in order to allow small IXCs to offer interexchange services at rates comparable to those offered by larger carriers without regard to whether the charges paid by the small IXCs cover the costs of the facilities that they use. While this structure has protected ''pluralistic supply in the interexchange market,'' *see First Transport Order,* our rules should promote competition, not protect certain competitors. We have recently concluded that no carrier is dominant with respect to domestic, interexchange services, *Motion of AT&T to be Reclassified as a Non-Dominant Carrier,* Order, 11 FCC Rcd 3271 (1995). Therefore, to the extent that we designed the interim rate structure to facilitate the growth of small IXCs in competition with AT&T, we find that such protective rules are no longer necessary. In a competitive market, we believe that we should strive to make our rate structure rules consistent with cost-causation principles, so long as those principles do not conflict with other statutory obligations, such as universal service. As the *CompTel* decision stated, ''attempt[ing] to recover costs from IXCs that did not cause those costs to be incurred would impart the wrong incentives to both actual and potential providers of local transport, thereby inducing them to offer an inefficient mix of dedicated, [direct-trunked transport], and tandem-switched service.'' *CompTel,* 87 F.3d at 530–531. Because rules that do not reflect cost-causation may cause IXCs to order an inefficient mix of transport services, such rules artificially raise the costs of providing interexchange services. Rules properly reflecting cost-causation, in contrast, will benefit LECs, IXCs, and consumers alike by encouraging competitors to provide service using facilities efficiently. In adopting the interim rate structure, we cited AT&T's estimate that the efficiency benefit to consumers of cost-based pricing and competition could reach $1 billion annually. *First Transport Order.* Our adoption of the three-part rate structure is intended to permit consumers the benefits of even greater service efficiency.

181. We therefore adopt the three-part structure as the final tandem-switched transport rate structure because this structure most closely reflects the manner in which LECs incur the costs of each component of the overall tandem-switched transport service. When combined with our actions with respect to the TIC, our adoption of actual minutes of use as the appropriate factor for determining per-minute rates for common transport circuits, and our allocation of the full cost of the tandem-switch to the tandem-switching rate elements, we expect that this structure will benefit LECs, IXCs, competitive providers of access services, and consumers. Tandem-switched transport facilities are sized to accommodate peak traffic loads, including overflow traffic from IXCs using direct-trunked transport facilities. Several commenters have stated that, until now, these overflow customers have not borne the full costs of these facilities because overflow customers pay only the same per-minute transmission charges applicable to other IXCs. The three-part rate structure will require the IXC purchasing tandem-switched transmission facilities to pay the full NTS costs of the dedicated serving wire center-to-tandem link, without regard for the amount of traffic transported. This benefit, in turn, will substantially increase IXC incentives to use tandem-switched transport efficiently for overflow traffic.

182. Some commenters argue that we should retain the unitary rate structure because tandem-switched transport, as a service, has traditionally been offered on an end-to-end basis. We agree that the transmission component of tandem-switched transport has in fact been offered on an end-to-end basis, but only pursuant to the requirements of the MFJ and our interim rate structure rules as part of a transition to cost-based rates. We find, however, that the transmission component of tandem-switched transport is not, in fact, provisioned by the incumbent LEC on an end-to-end basis. Purchasers of direct-trunked transport purchase an end-to-end service; they purchase from the incumbent LEC transport capacity between two end points. Tandem-switched transport customers, in contrast, purchase use of the tandem switch to route traffic to their POP. By virtue of their decision to choose tandem-switched transport, these customers specifically obligate the LEC to transport their traffic between the serving wire center and the tandem serving a particular end office or group of end offices and to perform the tandem switching function. Because they cause the incumbent LEC to incur the costs of transmitting their traffic between the serving wire center and the tandem, tandem-switched transport customers should, as a matter of cost-causation, pay the costs of reaching the tandem. In providing tandem-switched service, incumbent LECs must provision two separate circuits with distinctly different cost characteristics—one dedicated, and one shared. Tandem-switched service, therefore, is not provisioned on an end-to-end basis between the end office and serving wire center, but in three parts: (1) transmission from one ''end,'' the end office, to the tandem; (2) the tandem switching function itself; and (3) transmission from the tandem to the other ''end,'' the serving wire center. Just as the tandem-switched transport customer pays a separate charge for the tandem switch, the tandem-switched transport customer should pay separately for the two distinct transmission components.

183. Other commenters argue that the three-part rate structure will create LEC incentives to engage in inefficient network reconfiguration, placing tandems far from end offices and serving wire centers simply to increase tandem-switched transport revenues. These commenters further argue that, if we adopt the three-part rate structure, we need to control this incentive by establishing a process for review of the incumbent LECs' tandem deployment decisions. Based on this record, we conclude that these commenters' fears are not well founded. An incumbent LEC would likely incur substantial costs

to reconfigure placement of its tandem switches specifically to disadvantage IXC users of tandem switched transport. Because we expect the three part rate structure to catalyze the development of competition, we conclude that the incumbent LEC would not be likely to incur such costs. Although the incumbent LEC might be able to increase its tandem-switched transmission revenues in the short term to reflect inefficient routing, as more efficiently configured competitors enter the market, the LEC would not be able to sustain such artificially inflated rates and would then need to incur additional costs to reconfigure its network efficiently. Because, under our new competitive paradigm, a multitude of investment opportunities, including wireless services, video, and interLATA toll, may emerge for incumbent LECs, we agree with Ameritech that ''[s]uch misspent capital outlays and inefficient network configuration simply would not make good business sense.''

184. Moreover, the redeployment of tandem switches affects network efficiency with respect to both the incumbent LEC's own local and toll traffic, as well as intrastate and interstate access. Therefore, inefficient network reconfiguration would cause harm both to tandem-switched transport customers and to the incumbent LEC itself. Any additional transport revenues that the incumbent LEC generated through inefficient network reconfiguration would be at least partially offset by the additional costs of transporting the LEC's own traffic in similarly inefficient ways. As discussed above, as competition develops in the local market, we expect that an LEC would be reluctant to take steps to decrease its own efficiency.

185. Some commenters argue that we should retain the unitary rate structure because direct-trunked transport and tandem-switched transport circuits often travel along the same routes using the same physical facilities. These commenters argue, therefore, that it would be unfair or discriminatory to require tandem-switched transport users to purchase transmission based on airline mileage from the end office to the tandem to the serving wire center, while users of direct-trunked transport are permitted to purchase the same route on the basis of airline mileage from end office to the serving wire center directly. Other commenters argue that we should require the LECs to offer both types of transport based on actual route miles, revealing actual LEC network efficiencies and inefficiencies.

186. We disagree with both of these proposed modifications. An IXC purchasing direct-trunked transport requires the incumbent LEC to provide transport service between the end office and the serving wire center. Because the LEC must route direct-trunked transport traffic between only these two points, our rate structure requires the IXC to pay only for the airline mileage between those two points, reflecting the direct mileage route between the locations in the incumbent LEC network designated by the access customer. In contrast, an IXC purchasing tandem-switched transport purchases use of the access tandem switch and therefore requires the incumbent LEC to provide service between the serving wire center and the tandem, and between the tandem and the end office. Under the three part rate structure, the tandem-switched transport customer, like the direct-trunked transport customer, pays for the direct mileage between the locations in the incumbent LEC network designated by the customer—for tandem-switched transport, the serving wire center to tandem, and the tandem to the end office. Because the IXC has chosen to make use of the LEC tandem switching facilities, it should pay explicitly for the transport necessary to reach the tandem. The direct-trunked transport customer, in contrast, does not make use of the tandem switching facilities; even if the LEC routes direct-trunked transport traffic through the tandem office, this traffic is not switched at the tandem. While the incumbent LEC may choose to route direct-trunked traffic through the tandem office based on its own assessment of whether it is economically efficient to do so, the direct-trunked transport customer pays only for direct mileage between the locations it designated in the network.

187. We are not persuaded by arguments that we should retain the unitary pricing structure because the incumbent LEC, and not the tandem-switched transport customer, has selected the tandem location and, consequently, the tandem-switched transport customer should not pay for the direct mileage to and from the tandem location. The incumbent LEC equally chooses the locations of the serving wire center and end office, and yet access customers routinely pay mileage charges to and from those locations, rather than between the end points of the access service—the POP and the end user location. Similarly, we find that the three-part rate structure does not discriminate against IXCs using tandem-switched transport. As discussed above, the tandem-switched transport customer, unlike the direct-trunked transport customer, requires the incumbent LEC to route its traffic to the tandem, and so should pay the costs of reaching the tandem. In addition, an IXC operating efficiently often may choose to locate its POP at or close to the tandem, if the tandem-switching office also can function as the serving wire center, thus eliminating virtually all of the dedicated transport costs of the tandem-to-serving wire center link. While such an arrangement may be the most efficient transport architecture for tandem-switched transport, our current unitary pricing structure does not reflect the underlying costs of tandem-switched transport transmission facilities and so does not encourage efficient transport architectures.

188. The introduction of more modern network architectures, such as Synchronous Optical Network (SONET) rings, does not alter our conclusion that the three-part rate structure most closely approximates the nature of costs associated with each component of tandem-switched transport. WorldCom, for instance, asserts that the ''pyramid'' diagram included in the NPRM as Figure 1 is outdated and submits a diagram illustrating interoffice tandem-switched transport in a ring-based network. WorldCom states that the multiple routing options and the reduced distance sensitivity of transport costs in a SONET environment compel retention of the unitary rate structure. We conclude, however, that the differences WorldCom identifies do not support retention of the unitary rate structure because, even in a ring-based network, the three-part rate structure treats direct-trunked and tandem-switched transport consistently. In a fiber-optic or ring-based network, dedicated, direct-trunked transport circuits are given a constant, and exclusive, time slot assignment on a large, time-division multiplexed fiber-optic cable. The incumbent LEC routes traffic for the IXC purchasing the direct trunk into the dedicated circuit or time slot, where it is received elsewhere on the ring or in the network at the serving wire center. The direction or precise routing of the signal around the ring is irrelevant for purposes of the rate structure because the transport is priced on an airline-mileage basis between the two end points. Capacity dedicated to a particular IXC, however, is not available to the LEC for other purposes.

189. SONET ring architecture offers the LEC the capability to transport large traffic volumes with redundant routing options, but it does not alter the fundamental nature of tandem-switched transport. Tandem-switched transport is functionally very different from direct-trunked transport because, by

definition, the incumbent LEC must route an IXC's tandem-switched traffic through the tandem switch serving a particular end office. Whether using a SONET ring or not, the LEC must route its tandem-switched traffic into one of many shared common transport circuits or time slots allocated for transport between the end office and the tandem switch, and onto a second dedicated circuit or time slot for transport between the serving wire center and the tandem. Despite parties' arguments to the contrary, the precise routing of the traffic to the tandem, including the direction it may take around a SONET ring, is irrelevant to the rate structure because IXCs purchase transport under the three-part rate structure based on airline mileage to the tandem.

190. As discussed in connection with direct-trunked transport, above, ring network architectures may cause incumbent LECs transport costs to become less distance sensitive. Because our rate structure permits, but does not require, transport rates to be distance sensitive, LECs remain free to establish less distance sensitive transport rates to reflect the changing nature of these costs.

191. We also decline Teleport's suggestion to establish a flat-rated charge for the tandem switch, tied to the amount of dedicated capacity each IXC's serving wire center-side trunk ports provide. While the costs of these dedicated trunk ports are NTS, the record before us does not reflect that all of tandem-switching costs are similarly NTS. Rather, we conclude at this time that the costs of tandem switching likely vary, as do those of local switching, on a traffic-sensitive basis. In light of this conclusion, we find that it would be unreasonable to permit the incumbent LEC to recover all of its tandem-switching costs through flat-rated charges. As with the local switch, until we gain more experience with rate structures for unbundled network elements that are implemented pursuant to Sections 251 and 252 and that segregate switching costs into traffic-sensitive and NTS components, we will continue to adhere to the current, per-minute rate structure for shared switching facilities.

192. We also decline to adopt in full suggestions that we (1) retain the unitary pricing structure for tandem-switched transport, while (2) exempting IXCs and competing LECs that do not use the transport facilities supplied by the incumbent LEC from paying the TIC and (3) preventing the incumbent LEC from deaveraging the TIC within a state during a five year transition period. We are modifying our rules to prohibit incumbent LECs from assessing any per-minute residual TIC charge on any switched minutes of CAPs that interconnect with the incumbent LEC switched access network at the end office. In doing so, we adopt a position substantially similar to the second enumerated point, above, which Teleport and CompTel characterize as the ''most important'' feature of this proposal. In addition, we are also taking other measures that will reduce substantially or eliminate the TIC in an expeditious manner. We decline, however, to adopt the other two suggestions. As explained in more detail above, the unitary rate structure is not cost-based in that it requires incumbent LECs to recover costs incurred on an NTS basis through per-minute charges and inhibits the development of competition by bundling reasonably segregable components of tandem-switched transport together and pricing them in a manner that does not reflect cost causation. We conclude that our new paradigm of promoting efficient competition requires that incumbent LECs adopt a cost-based transport rate structure and that entrants providing transport facilities in competition with the incumbent LEC not pay the TIC.

193. Although in their comments in this proceeding the incumbent LECs virtually unanimously favor the three-part rate structure as most consistent with principles of cost-causation, we recognize that incumbent LECs may face competition from competitors that are not limited to the three-part rate structure we adopt for incumbent LECs today. As such competition develops, the incumbent LEC may wish to respond by offering tandem-switched transport on a unitary pricing basis. We will address issues relating to when incumbent LECs should have the flexibility to offer a unitary tandem-switched transport rate structure in connection with our discussion of other pricing flexibility issues in a subsequent Report and Order that we will adopt in this proceeding.

194. *Peak and Off-Peak Pricing.* As with the local switch, we conclude that we should not mandate a peak-rate pricing structure for the tandem switch or common transport at this time. Many of the same practical difficulties with establishing, verifying, and enforcing a rational, efficient, and fair peak-rate structure exist in the context of the tandem switch. We will consider whether incumbent LECs should have the flexibility to develop such peak and off-peak rate structures for local switching on a permissive basis when we consider other issues of rate structure flexibility in a subsequent Report and Order that we will adopt in this proceeding.

d. Rate Levels

195. *Allocation of 80 Percent of the Tandem Switching Revenue Requirement to the TIC.* In establishing the interim transport rate structure, we required incumbent LECs to base their initial tandem switching charge on 20 percent of the interstate tandem-switching revenue requirement. In remanding this portion of the interim rate structure to us, the D.C. Circuit directed us either to implement a cost-based tandem switching rate or offer a rational and non-conclusory analysis in support of our determination that an alternative structure is preferable.

196. Based on the record in this proceeding, we reallocate much of the remaining 80 percent of the tandem switch revenue requirement back to the tandem switching rate elements in three steps. We conclude that this action is most consistent with cost-causation, and with the general approach we are taking in this Order regarding pricing issues. We do not require all of the 80 percent to be reallocated to tandem switching rates because the tandem-switching revenue requirement includes, not only the costs of the tandem switch, but other costs, such as SS7 signalling costs and tandem port costs, which we are requiring to be reallocated elsewhere.

197. Furthermore, if we required the price cap LECs to reallocate, dollar-for-dollar, the entire portion of the tandem switching revenue requirement that we reallocated to the original TIC in the *First Transport Order,* we would deny tandem-switched transport customers the continuing benefits of past X-factor reductions in the revenues permitted under price caps. Therefore, in order to preclude recovery of tandem switching costs in excess of the current revenues permitted under price caps, we direct price cap incumbent LECs first to account in the following manner for the effects of ''GDP–PI minus X-factor'' reductions to the original portion of the tandem switching revenue requirement allocated to the TIC in the *First Transport Order.* Each price cap LEC first should calculate the percentage of its total original TIC that represented the 80 percent reallocation of its tandem switching costs when the TIC was created. It should then calculate this percentage of its current TIC, which represents the extant portion of the reallocated tandem switching costs. It is this extant portion that the price cap LECs should reallocate to tandem switching as described in the next paragraph.

198. In access tariff filings to become effective on January 1, 1998, incumbent LECs must identify the portion of the tandem-switching revenue requirement currently in the TIC that they reallocate to each rate element, including, as applicable, SS7 signalling, tandem port costs, or other rate elements. They must then reallocate one third of the tandem switching revenue requirement remaining in the TIC to the tandem switching rate element. Effective January 1, 1999, incumbent LECs shall reallocate approximately one half of the remaining amount of the tandem switching revenue requirement in the TIC to the tandem switching rate elements. Effective January 1, 2000, incumbent LECs shall reallocate any portion of the tandem switching revenue requirement remaining in the TIC to the tandem switching rate element. This three-step implementation of this change permits IXCs time to adjust their use of various incumbent LEC transport services, but sets a definite end date in the near future, thus responding to the *CompTel* decision's concerns regarding the length of the transition to a cost-based transport rate structure.

199. Some commenters argue that, rather than reallocating revenues from the TIC to other rate elements, we should reinitialize tandem-switched transport rates to levels reflecting long run incremental costs, making reallocation of TIC revenues to other transport rate elements unnecessary. We have decided in this Order, however, not to reinitialize access rates based on forward-looking cost principles. We have instead determined that the first step in access reform is to make the current system as economically efficient as is possible within the limits of current ratemaking practices. Thus, the focus of this portion of this proceeding is on the development of cost-causative rate structure rules. While we are taking several prescriptive steps using existing ratemaking methods to reduce initial baseline rates, we are generally adopting a market-based approach, with a prescriptive backdrop, to move rates over time to levels reflecting forward-looking economic costs. We disagree with those commenters that argue that the *Local Competition Order* requires us immediately to prescribe rate levels for access elements based on long-run incremental costs. *The Local Competition Order* addressed, inter alia, the pricing of unbundled network elements. While unbundled network elements may be used to provide interstate access services, their availability at TELRIC-based prices does not compel adoption of similar rates for access services. We intend instead to rely on the availability of unbundled network elements to place market-based downward pressures on access rates, subject to a prescriptive backstop. We will further address questions related to reinitialization to TELRIC rate levels in connection with our discussion of the prescriptive approach to access reform.

200. *Use of Switched Access Overhead Loadings for Initial Tandem Switching Rates.* In setting rates, the interim transport rate structure derived both direct-trunked transport rates and tandem-switched transmission rates using relatively low overhead loadings applicable to special access. Tandem switching rates, in contrast, were set using relatively higher switched access overhead loadings. As a result, the tandem switching revenue requirement became relatively high, in comparison to other transport rate elements.

201. Several commenters in this proceeding contend that our use of special access overheads in setting direct trunked transport rates was inappropriate because, while special access is used almost exclusively in high density, generally urban areas, direct-trunked transport and, to an even greater extent, tandem-switched transport are used in less dense areas. In these less dense areas, overhead costs associated with transport may be higher than those associated with special access in urban areas. Some commenters have argued that we should either (1) equalize the overhead loading factors for all transport options by directing that the difference in transport rates is equal to the difference in the long run incremental cost of each transport option (DS3, DS1, and tandem-switched transport); or (2) otherwise ensure that transport customers pay an equal dollar amount of overhead per unit of traffic transported.

202. We conclude that we need to make no change to the overheads attributed to tandem switching. As discussed above, we have decided not to base access prices directly at this time on incremental cost studies, but instead to make significant changes in existing ratemaking practices as the first step in access reform. Our current methods allocate overhead in a reasonable, cost-based manner. In consultation with the Joint Board on Jurisdictional Separations, the Commission established procedures for allocating overhead expenses between the state and interstate jurisdictions. *See, e.g.,* 47 CFR § 36.192, separating Corporate Operations Expenses, USOA Accounts 6710 and 6720, on the basis of the separation of the Big Three Expenses: Plant Specific Expenses, Plant Non-Specific Expenses, and Customer Operations Expenses. Our Part 69 cost allocation rules in turn allocated interstate direct investment to broad categories, including Central Office Equipment (with respect to both local switching and tandem switching) and Carrier Cable and Wire Facilities (with respect to special access, direct-trunked transport, and tandem-switched transport transmission facilities). 47 CFR §§ 69.305–69.306. Other investment, including overhead, was allocated among these categories in proportion to the dollar amounts of net direct investment allocated to these categories. 47 CFR § 69.309. Similarly, direct expenses, where possible, were allocated to the category to which the expenses are related. *E.g.,* 47 CFR § 69.401. Other expenses, including overheads, are allocated on the same basis as other investment, according to relative dollar amounts allocated to the various categories. 47 CFR § 69.411. The Commission has stated that initial allocation of overheads based on relative costs closely approximates an economically efficient method assuming that the elasticity of demands for the various outputs is not too dissimilar. *See, e.g., First Transport Order.*

203. Our Part 69 cost allocation rules, therefore, established category revenue requirements that included overheads allocated generally based on relative costs. Once these initial revenue requirements were established, our Part 69 rules permitted incumbent LECs to recover all costs assigned to each category through the rate elements established for that category. The incumbent LECs were permitted to assign overhead costs among the category rate elements in any way that is just and reasonable and not unreasonably discriminatory. 47 U.S.C. secs. 201–202. We find that it is reasonable to have set overhead loadings for tandem switching consistently with the overhead loadings for local switching, and disagree with those parties that argue that there is no cost justification for the current allocation of overheads to the tandem switch. The direct costs of both kinds of switching are fundamentally the same in that both types of switches are comprised of ports and a switching matrix. By contrast, the direct costs of transmission consist of outside plant and circuit equipment and certain central office equipment. So long as consistent overhead loading methodologies were used across switching functions, and across transmission functions, we find that a

reasonable cross-over is established for access customers between direct-trunked transport and tandem-switched transport. As competition develops, we can also rely on market forces to pressure incumbent LECs to allocate overheads among rate elements in economically efficient ways. We address issues concerning the use of special access prices to initialize direct-trunked transport rates in the interim rate restructure below in our discussion of the TIC.

204. We also decline to adopt a requirement for equalized overhead loadings. Overhead loadings are used to assign costs that do not qualify as the direct costs of a particular service. Reasonable definitions of direct costs often leave in the overhead category costs that might reasonably be deemed attributable to a given service. Thus, if all of a carrier's costs are classified as either ''direct costs'' or ''overheads,'' the overhead category will likely include costs that should not necessarily apply uniformly to all services. As a result, we think it desirable not to adopt a policy that is too specific and too rigid, and that might not permit recognition of legitimate differences in costing definitions. Furthermore, in a competitive market, it would be mere happenstance if different products or services of a single company recovered uniform amounts of overhead. If we were to require equalized overhead loadings, we would be interfering with the market discipline on which we are primarily relying. We might, for example, prevent an entrant from realizing a reasonable profit opportunity based on a rigid overhead loading requirement.

205. In determining that our existing cost allocation rules reasonably allocated overhead to the initial tandem switching rate element and that we thus need not change the overheads currently attributed to tandem switching, we recognize that the D.C. Circuit in *CompTel* remanded the overhead issue to the Commission for further explanation and stated that the ''cost allocation to the tandem switch'' under the existing allocation rules ''is, by the Commission's own estimation, grossly excessive.'' *CompTel*, 87 F.3d at 533. The court did not provide a cite for its characterization of the Commission's ''estimation,'' but the court may have been referring to the agency's finding in the *First Transport Order* that ''most, but not all, of the interstate tandem revenue requirement is attributable to tandem-switched transport'' (emphasis added). The Commission in that order also identified only one category of costs—having to do with SS7 technology—that appeared to be misallocated to tandem switching. *Id*. Elsewhere in this Order, we have taken steps to address that misallocation of SS7 costs. That correction having been made, we find that our existing rules reasonably allocate overhead to tandem switching for the reasons discussed above.

206. *Use of actual minutes of use rather than an assumed 9000 minutes of use.* For tandem-switched transport rates to be presumed reasonable, the interim rate structure requires incumbent LECs to set per-minute tandem-switched transport rates using a weighted average of DS1 and DS3 rates reflecting the relative numbers of circuits of each type in use in the tandem-to-end office link, and assuming circuit loading of 9000 minutes of use per month per voice-grade circuit. *First Transport Order.* Based on the record before us, we find that continued use of this 9000 minutes of use assumption is no longer reasonable. Many commenters state that their actual traffic levels are substantially lower than 9000 minutes of use per month. Some incumbent LECs, particularly smaller LECs in rural areas, indicate that their actual traffic levels may be as low as 4000 minutes of use per month per voice-grade circuit. Accordingly, we conclude that rates for the common transport portion of tandem-switched transport must be set using a weighted average of DS1 and DS3 rates reflecting the relative numbers of DS1 and DS3 circuits in use in the tandem-to-end office link, and using the actual voice-grade switched access common transport circuit loadings, measured as total actual minutes of use, geographically averaged on a study-area-wide basis, that the incumbent LEC experiences based on the prior year's annual use. Incumbent LECs that deaverage their transport rates under our existing zone-based deaveraging rules, *see* 47 CFR § 69.123, may similarly deaverage the actual minutes of use figures that they use to calculate per-minute common transport rates.

207. Our assumption that voice-grade common transport circuits experience uniform loadings of 9000 minutes of use was initially based on 1983 data submitted in the original *MTS and WATS Market Structure* proceeding. MTS and WATS Market Structure, CC Docket No. 78–72, Phase I, Memorandum Opinion and Order, 48 FR 42984 (September 21, 1983). In using this assumption as part of the interim rate structure, we stated that, ''[t]he 9000 minutes per circuit per month standard serves as a convenient starting point in the context of a short-term, interim rate structure.'' *First Transport Reconsideration Order.* We rejected at that time requests to develop a loading factor for small LECs that would reflect their actual, substantially lower circuit loading levels, stating that, ''the benefits to be obtained from use of more individualized loading factors are outweighed by the benefits of the administrative convenience of a uniform loading factor and of avoiding verification difficulties.'' *Id*. Given the new competitive paradigm embodied in the 1996 Act, we conclude that this assumption must give way to charges based on actual usage levels. The same conversion factor is not appropriate for each incumbent LEC. Because the 9000 minute assumption appears to have substantially overstated the actual traffic levels on many circuits, we now conclude that the current rate structure is unlikely to recover the full costs of common transport. Costs that properly should be recovered from common transport rate elements may currently be recovered through TIC revenues. Because the 9000 minutes of use loading factor has contributed, possibly significantly, to the level of the non-cost-based TIC, we find that continued use of this factor is no longer reasonable.

208. We therefore direct incumbent LECs to develop common transport rates based on the relative numbers of DS1 and DS3 circuits in use in the tandem-to-end office link, and using actual voice-grade circuit loadings, geographically averaged on a study-area-wide basis, that the incumbent LEC experiences based on the prior year's annual use. As discussed above, incumbent LECs that deaverage their transport rates under our existing zone-based deaveraging rules may similarly deaverage the actual minutes of use figures that they use to calculate per-minute common transport rates. As they develop transport rates based on actual minutes of use, we require incumbent LECs to use any increase in common transport revenues to decrease the TIC. These rates must be included in the LEC access tariff filings effective January 1, 1998.

209. We disagree with commenters arguing that the actual number of minutes a circuit is in use is irrelevant in a rate-setting context. These commenters argue that rates should be set based on forward-looking cost studies using Commission-determined ''efficient'' traffic levels, which they argue may be far higher than either the actual traffic levels, or the 9000 minutes of use assumption. As explained elsewhere, we are not taking the general approach of prescribing rates at forward looking economic costs, and we decline

to make an exception in this instance. We are instead reforming access charges so that they more closely reflect the costs imposed by individual access customers. We also do not find it necessary to employ different principles here to ensure that incumbent LECs face sufficient incentives to design their networks to achieve efficient usage levels. LECs subject to price cap regulation already have only limited ability to raise rates to cover the costs of inefficient network designs, and are able to benefit from increased profits as their efficiency improves. In addition, as competition develops for local service, all incumbent LECs will face increasing pressure to provide service as efficiently as possible.

C. Transport Interconnection Charge (TIC)

1. Background

210. Under our Part 36 separations rules, certain costs of the incumbent LEC network are assigned to the interstate jurisdiction. The Part 69 cost allocation rules allocate these costs among the various access and interexchange services, including transport. In the *First Transport Order,* we restructured interstate transport rates for incumbent LECs. The restructure created facility-based rates for dedicated transport services based on comparable special access rates as of September 1, 1991, derived per-minute tandem-switched transport transmission rates from those dedicated rates, established a tandem switching rate, and established a TIC that initially recovered the difference between the revenues from the new facility-based rates and the revenues that would have been realized under the preexisting ''equal charge rule.'' Under the equal charge rule, which arose from the AT&T divestiture of the BOCs, the BOCs were required to charge a per-minute, distance-sensitive rate for their transport offerings, regardless of how the underlying costs were incurred. The TIC was intended as a transitional measure that initially made the transport rate restructure revenue neutral for incumbent LECs and reduced any harmful interim effects on small IXCs caused by the restructuring of transport rates. Approximately 70 percent of incumbent LEC transport revenues are generated through TIC charges, or approximately $3.1 billion, according to USTA.

211. The TIC is a per-minute charge assessed on all switched access minutes, including those of competitors that interconnect with the LEC switched access network through expanded interconnection. In the NPRM, we sought comment on how to reduce and eliminate the TIC in a manner that fosters competition and responds to the D.C. Circuit's *CompTel* remand. We sought comment on different methods of recovering the costs currently recovered by the TIC, including: (1) Giving the incumbent LECs significant pricing flexibility and allowing market forces to discipline the recovery of the TIC, either alone or in conjunction with a phase-out of the TIC; (2) quantifying and correcting all identifiable cost misallocations and other practices that result in costs being recovered through the TIC; (3) combining the above approaches, for example, by addressing directly the most significant and readily-corrected misallocations, and then relying on a market-based approach to reduce what remains of the TIC; (4) providing for the termination of the TIC over a specified time, such as three years. We specifically sought comment on the possible reassignment of costs based on several explanations for the amounts in the TIC. The NPRM also sought comment on how the resolution of the issues surrounding the TIC would be affected by decisions on universal service, by the level of any residual costs, and by the adoption of either the market-based or prescriptive approach to access reform.

2. Discussion

212. As a per-minute charge assessed on all switched access minutes, including those of competing providers of transport service that interconnect with the LEC switched access network through expanded interconnection, the TIC adversely affects the development of competition in the interstate access market. First, as discussed more fully below, some of the revenues recovered through the TIC should be recovered through other switched access elements, including transport rates other than the TIC. The TIC, as currently structured, provides the incumbent LECs with a competitive advantage for some of their interstate switched access services because the charges for those services do not recover their full costs. At the same time, the incumbent LECs' competitors using expanded interconnection must pay a share of incumbent LEC transport costs through the TIC. Under our expanded interconnection rules and policies, competitors may interconnect with the incumbent LEC's facilities at the end office and supply their own transport. For a more detailed discussion of expanded interconnection, *see* Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141, Memorandum Opinion and Order, 59 FR 38922 (August 1, 1994). Second, all other things being equal, the usage-rated TIC increases the per-minute access charges paid by IXCs and long-distance consumers, thus artificially suppressing usage of such services and encouraging customers to explore ways to bypass the LEC switched access network, particularly through the use of switched facilities of providers other than the incumbent LEC that may be less economically efficient than incumbent LECs.

213. As we noted in the NPRM, our goal is to establish a mechanism to reduce and eliminate the TIC in a manner that fosters competition and responds to the D.C. Circuit's remand. To that end, we below identify several costs included in the TIC that should be reallocated to other access elements. We conclude, however, that on the present record, we cannot immediately eliminate the TIC entirely through these reassignments. We establish a mechanism that should substantially reduce the remaining TIC over a short, but reasonable period. In addition, we will in the near future refer a broad range of separations issues to a Joint Board for purposes of determining whether certain costs currently allocated to the interstate jurisdiction and recovered through the TIC more properly should be allocated to the intrastate jurisdiction. Finally, we establish the means by which the remaining TIC amounts are to be recovered.

a. Reallocation of Costs in the TIC

214. The record in response to the NPRM clearly establishes that some costs in the TIC should be reallocated to other access elements. USTA, in conjunction with the incumbent LECs, submitted extensive comments setting forth an incumbent LEC consensus explanation of the causes for the sums in the TIC and estimates of the amounts associated with each explanation. While the current rulemaking record will not permit us to prescribe specific amounts that individual incumbent LECs must shift from the TIC to specific access rate elements, it does permit us to direct incumbent LECs to make certain cost reallocations and to require them to calculate the appropriate level of the reallocation in the supporting materials filed with the tariffs implementing the changes. Below, we discuss each of the identified causes of costs being included in the TIC and the extent to which costs should be reallocated to other access elements or categories.

215. In this Order, we do not address certain rate structure issues relating to incumbent LECs subject to rate-of-return regulation. These LECs account for relatively few access lines. In some instances we direct price cap LECs to allocate costs to new rate elements that do not currently exist for rate-of-return LECs. We anticipate that we will propose similar rate elements in the forthcoming notice of proposed rulemaking addressing rate structure issues for incumbent LECs subject to rate-of-return regulation. Recognizing the expense and difficulties of modifying billing systems, we conclude that, until the rate structure issues are resolved for rate-of-return companies, the costs allocated to new elements and any residual TIC revenues may continue to be recovered by the incumbent LECs that are not subject to price cap regulation through per-minute TIC rates assessed on both originating and terminating access.

216. As their primary challenge to the incumbent LEC proposals to reallocate costs from the TIC, several parties argue that we should use forward-looking cost principles, or TELRIC, in determining how much to shift from the TIC to other access categories. Some parties advocating the use of such forward-looking cost standards assert that any costs not meeting these forward-looking cost standards should be eliminated from the TIC, and the incumbent LECs should not be permitted to recover those amounts. One group of consumer advocates proposes that we need not complete TELRIC studies before substantially reducing the TIC because BA/NYNEX has already proposed, as part of their access charge reform compromise plan, to eliminate up to 80 percent of the TIC pending a determination of ''service related'' costs by the Commission. We conclude, however, that immediate, widespread, prescriptive action is not necessary to pressure access rates toward market-based levels. Instead, we have determined that the most appropriate first step towards access reform is to make the current rate structure as economically efficient as possible within the limits of past ratemaking practices. These practices include setting rates based on interstate-allocated costs, subject to price cap constraints for most large carriers. As we discuss more fully in Section IV, below, we intend in the future to rely primarily on market forces, with a prescriptive backdrop, to move rates toward forward-looking economic cost. Therefore, because we currently are not prescribing a forward-looking cost method for access reform, we will require reassignment of certain TIC revenues based on an analysis of the separated, booked costs already recovered through the TIC.

217. *SS7 costs.* Based on the record before us, we conclude that SS7 costs that are recovered by the TIC should be removed from the TIC and allocated to the traffic-sensitive basket. The record demonstrates that these costs are related to the signalling function and should be recovered through local switching or signalling rate elements. The costs to be removed are the costs of signal transfer points (STPs) that were included in the tandem-switching category for jurisdictional separations purposes and the cost of the link between the end office and the STP that is used only for SS7 signalling. The incumbent LECs shall distribute the STP costs reallocated from the TIC to local switching or, if the incumbent LEC has established an unbundled signalling rate structure, to appropriate SS7 elements, in tariffs filed to be effective January 1, 1998. The incumbent LEC shall distribute the costs of the link between the local switch and the STP that are included in the TIC to local switching or, if provided, to the call-setup charge. This change means that the incumbent LECs' SS7 prices will reflect the full cost of providing SS7 signalling and provide the proper price signals to developers of new services utilizing SS7. We decline to adopt the suggestion of US West that we reallocate SS7 costs to services in the trunking basket. As we conclude below in conjunction with our consideration of the SS7 rate structure, the costs being reallocated are appropriately included in the traffic-sensitive basket.

218. *Tandem switching costs.* Several parties argue that the tandem switching rate must be set to reflect the cost of providing the service. In the preceding section, we modified the existing tandem-switched transport rate structure and revised certain of the pricing rules applicable to elements of tandem-switched transport to establish a cost-based structure and to respond to the court remand in *CompTel* v. *FCC.* The revised pricing rules applicable to tandem switching include two separate elements—a flat-rated port charge to be assessed when a port is dedicated to a single customer and a per minute charge to be assessed for the traffic-sensitive portion of the tandem switch. In three approximately equal annual steps, beginning January 1, 1998, we require reallocation of all tandem-switching revenues currently allocated to the TIC to the tandem-switching rate element. As a result of this modification, the total revenues recovered through the tandem switching rates will, subject to price cap limits, increase to the level of costs assigned to the interstate jurisdiction by the separations process at the end of our plan. Equivalent changes to the amounts recovered through the TIC must be made to ensure that over-recovery does not occur. After this adjustment, in accordance with the *CompTel* remand, and to facilitate the development of economically-efficient competition for tandem-switching services, the TIC will not recover any costs that are attributable to tandem switching.

219. *DS1/voice-grade multiplexer costs.* We conclude that the costs of DS1/voice-grade multiplexing associated with analog local switches should be reassigned to the newly created trunk ports category within the traffic sensitive basket. Analog switches require a voice-grade interface on the trunk-side of the end office switch. Our separations rules assign the costs of DS1/voice-grade multiplexers to the cable and wire category. The costs of these multiplexers associated with switched access were originally included in the Part 69 transport revenue requirement. The revised transport rules adopted in 1992 established transport rates based on DS1 switch interfaces, and thus the rates did not include the costs of DS1/voice-grade multiplexers. The costs of the DS1/voice-grade multiplexers are, therefore, included in the TIC. Therefore, the costs associated with DS1/voice-grade multiplexing associated with analog local switches should be reassigned to the trunk ports category within the traffic sensitive basket, to be considered in conjunction with the development of appropriate rates for trunk ports, in tariffs filed to become effective January 1, 1998. This will make recovery of the costs necessary to use an analog switch port equivalent to the recovery of digital switch port costs, in which the multiplexing function is included in the port itself.

220. *Host/remote trunking costs.* We agree with the parties that allege that the costs of host/remote links not recovered by the current tandem-switched transport rates should be included in the tandem-switched transport category. The record reflects that the rates for carrying traffic between the host and a remote switch, for which the tandem-switched transport rates, both fixed and per mile, are assessed, do not recover the full costs of this transmission service. These charges for host/remote service are in addition to charges that an IXC is assessed for either direct-trunked transport, or tandem-switched transport, between the serving wire center and the

host end office. This reassignment will ensure that these transmission costs will be recovered from those using the transmission facilities, and must be included in tariff filings to become effective January 1, 1998. We reject NECA's suggestion that we include these costs in local switching on the theory that remote facilities are installed when it is more cost effective to do that than it is to install a new switch at the remote location. That would require all users of local switching to pay for these host/remote transmission facilities. Imposing the host/remote transmission cost on the users of host/remote facilities is more cost causative and will facilitate the development of access competition.

221. *Additional multiplexers associated with tandem switching.* Based on the record before us, we conclude that an IXC's decision to utilize tandem-switched transport imposes the need for additional multiplexing on each side of the tandem switch. The revised tandem-switched transport rate structure provides for these multiplexers. For price cap LECs, recovery of the costs associated with the multiplexers should, therefore, be shifted from the TIC to the tandem-switched transport category as of January 1, 1998, as explained in Section III.C. This realignment of costs helps ensure that tandem-switched transport rates are cost based, as required by the *CompTel* decision, and facilitates competitive entry for those services.

222. *Use of actual minutes of use rather than an assumed 9000 minutes of use.* The data in the record provided by USTA and other incumbent LECs support a finding that for many incumbent LECs, especially those serving less densely populated areas, the assumed 9000 minutes of use per circuit is far higher than actual minutes of use. A tandem-switched transport rate derived by dividing the cost of a circuit by an assumed usage level does not recover the costs of the circuit when the actual usage is below that level. The costs not recovered through tandem-switched transport rates based on our current 9000 minutes of use assumption are being recovered through the TIC. In the preceding section, we conclude that the pricing of tandem-switched transport transmission should be based on the actual average minutes of use on the shared circuits and that such pricing would produce a cost-based rate. Accordingly, costs should be removed from the TIC equal to the additional revenues realized from the new tandem-switched transport rates when it is implemented in accordance with the rate structure established in Section III.C.

223. *Central Office Equipment (COE) Maintenance Expenses.* The record in this proceeding demonstrates that allocating COE maintenance expenses on the basis of combined COE investment produces misallocations of these expenses among access services. USTA correctly traces this problem to the Part 36 separations rules; the problem is then tracked in our Part 69 cost allocation rules. Under our current rules, COE maintenance expenses are allocated among separations categories, and then access services, based on the combined investment in the three categories of the COE plant being maintained—Central Office Switching, Operator Systems, and Central Office-Transmission—rather than on the individual investment in each of those categories. As a result, a portion of the expense of maintaining local switches and operator systems is recovered in rates for common line, transport, and special access even though those do not utilize any local switching or operator systems. Correcting this misallocation through changes to Part 36 would require referral to a Federal-State Joint Board and therefore could not be done in this proceeding. The misallocation can, however, be corrected by modifying section 69.401 of our rules, 47 CFR § 69.401, to provide that the COE expenses assigned to the interstate jurisdiction should be allocated on the basis of the allocation of the specific type of COE investment being maintained, and we make the correction here. This will shift some costs to local switching from common line and transport, and result in more cost-based rates. This shift must be reflected in tariff filings to be effective January 1, 1998. We also plan to refer the underlying separations issue to a Joint Board for its recommendation.

224. *Separations-related causes.* Several incumbent LECs argue that a substantial portion of the TIC can be traced to decisions separating costs between the interstate and intrastate jurisdictions. As explained by USTA and incumbent LECs, the largest portion of the amounts recovered by the TIC results from the differences in the jurisdictional separations allocation procedures for message (i.e., switched) services and special access services, and from the consequent effects of the Commission's decision to use special access rates to establish transport transmission rates when the Commission restructured transport rates. The current jurisdictional separations process separates the costs of message services based on average cost factors; costs of DS1 and DS3 special access services, in contrast, are separated using unit costing methods. Because of the differences in these separations methodologies, special access-derived rates reflect the costs of transport in areas in which special access services are most often offered (urban, higher density areas), and do not reflect the costs of transport in rural, less dense areas. Another alleged separations-related cause of the amounts in the TIC is the use of circuit termination counts in the separations process to allocate costs between special access and switched services before they are allocated between federal and state jurisdictions. This practice appears to allocate costs disproportionately to switched services. The incumbent LECs assert that the use of direct costing methods would assign many of these costs to local and intrastate services and to interstate services other than transport. If the Joint Board on Jurisdictional Separations takes action to address this issue, we will then consider what corresponding reallocations should be made.

225. We find that some of the remaining costs recovered by the TIC result from at least two different causes: (1) the separations process assigned costs differently to private line and message (i.e., switched) services, resulting in costs allocated to special access being lower than those allocated to the message category, even though the two services use comparable facilities—rates for direct-trunked transport and the transmission component of tandem-switched transport, which are switched services, therefore, do not recover the full amount of separated costs; and (2) the cost of providing transport services in less densely populated areas is higher than that reflected by transport rates derived from those special access rates. The existing record is inadequate to permit us to identify more costs that could clearly be reallocated to interstate services. Furthermore, the record indicates that some residual TIC costs may be appropriately allocated to intrastate services. Because we will soon be considering a NPRM of Proposed Rulemaking to refer to a Joint Board questions regarding separations, we will leave the determination of the ultimate allocation of the remaining costs recovered by the TIC until the conclusion of that proceeding.

226. Incumbent LEC parties generally contend that special access rates provided an acceptable initializing pricing level for transport transmission services in geographic areas where significant amounts of special access

services are provided, but do not reflect the cost of providing transport service in low-density areas in which special access services are not as widespread. We recognize that rates for direct-trunked transport and for the transmission component of tandem-switched transport, because they were established based on special access rates, do not reflect the full cost of providing transport services in higher-cost, rural areas. Because none of our other facilities-based rate elements recover costs reflecting this differential, we conclude that the additional costs of rural transport currently are recovered through the TIC. On the basis of the current record, however, we are unable to quantify these cost differentials. Moreover, based on differences in network architectures, population density variations, topography, and other factors that vary among LECs, we find that transport cost differentials are also likely to vary greatly among incumbent LECs and among study areas served by the same incumbent LEC. We do not believe, however, that we need to quantify these differences in this Order to ameliorate this distortion caused by the current rate structure, because the requirements set forth in the next paragraph will address this issue.

227. If an incumbent LEC deaverages its transport rates, either by implementing zone-density pricing under our rules, 47 CFR § 69.123, or by waiver, the underlying predicate is that the costs in low-density areas are higher than those in higher-density areas. The rates it sets for the different areas should reveal a cost differential of at least that magnitude between low-density and high-density areas served by that LEC. When an incumbent LEC deaverages transport rates, therefore, we require it to reallocate additional TIC amounts to facilities-based transport rates, reflecting the higher costs of serving lower-density areas. The reallocation we require here will permit incumbent LECs, in deaveraging their transport rates, to achieve cost-based transport rates while ensuring that a significant portion of costs reflecting the geographic cost difference are removed from the TIC. Each incumbent LEC must reallocate costs from the TIC each time it increases the deaveraging differential. We find that any incumbent LEC that has already deaveraged its rates must move an equivalent amount from the TIC to its transport services. Under any of these scenarios, the costs shall be reassigned to direct-trunked transport and tandem-switched transport categories or subcategories in a manner that reflects the way deaveraging is being implemented by the incumbent LEC. We do not require incumbent LECs that average their transport rates to make a similar reallocation at this time, because of the difficulty in determining the amount to be reallocated.

228. *Price Cap Implementation issues.* For purposes of phasing out the TIC, we are keeping the TIC in its own service category in the trunking basket. The reallocation of costs from the TIC to other access elements will require price cap LECs to adjust their price cap indices (PCIs) and service band indices (SBIs) to reflect the new revenue streams. To accomplish these reallocations, price cap LECs shall make exogenous adjustments to their PCIs and SBIs that are targeted to the indices in question, rather than applying the exogenous adjustment proportionately across all categories in the affected price cap basket. Thus, when a reallocation occurs within a price cap basket, only the affected SBIs will be adjusted. When the reallocation affects service categories in more than one basket, however, the affected PCIs and SBIs must be adjusted. The upward or downward adjustment to the PCIs and upper SBIs shall be calculated as the percentage of the revenues being added or subtracted from a basket or category, divided by the total revenues recovered through the basket or category at the time of the adjustment. For example, if ten percent of the revenues are being reallocated from a service category, the category upper SBI will be reduced by ten percent. If that revenue amount is only three percent of the PCI for the basket, the PCI is reduced by three percent.

b. Treatment of Remaining Costs Recovered by the TIC

229. *Residual TIC reduction plan.* After the costs identified above have been reallocated to other access services, some costs will continue to be recovered by the TIC. While it is desirable to eliminate the TIC as soon as possible by shifting the costs recovered by the TIC to facilities-based rates, referring separations questions to a Joint Board is the best means of reaching that ultimate objective, as we noted earlier. Even as we make this referral, we will require incumbent LECs to target to the TIC price cap reductions arising in any price cap basket as a result of the application of the ''GDP–PI minus X-factor'' formula until the per-minute TIC is eliminated, as many parties have suggested. These parties submit that this targeting will permit incumbent LECs to manage the reduction in revenues recovered by the TIC, while reducing the amount at issue in the TIC. Sprint states that, using a targeting approach, we would not need to address the cost allocation issues raised by Part 36 and Part 69. Targeting these price cap reductions to the TIC reduces the TIC over a reasonable period, thereby ultimately substantially reducing what is widely recognized to be an inefficient aspect of the access rate structure. We require price-cap LECs to begin these targeted X-factor reductions to the TIC in tariff filings to become effective July 1, 1997.

230. Targeting PCI reductions to the per-minute TIC will not change the overall revenue levels that our price cap mechanisms permit incumbent LECs to receive. We have reallocated those costs that the record shows are clearly related to other facilities-based elements. The upcoming separations proceeding may provide additional data that will permit us to reallocate more costs to facilities-based rate elements, or to the intrastate jurisdiction. The approach we take is a reasonable response to the D.C. Circuit's remand directive, and establishes a plan that should substantially reduce the TIC within a reasonable period, pending review of the jurisdictional separations process.

231. We reject ALTS' allegation that targeting the productivity factor to the TIC undercuts the rationale for the ''just and reasonable'' status of all price-cap rates, which ALTS contends is dependant on the widespread application of the X-factor. The targeting approach that we adopt will eliminate anticompetitive aspects of the TIC, which promotes inefficient entry into the transport market by imposing some transport costs on IXCs that do not cause the costs to be incurred. In addition, by spreading current TIC revenues across all price cap PCIs and SBIs, our targeting method does not offer TIC revenues special insulation against the pressures of the competitive marketplace, as would some proposals to bulk-bill the TIC to IXCs. We also decline to adopt the approach of spreading the remaining costs recovered by the TIC proportionately among all transport services, as proposed by State Consumer Advocates. That approach might, because of the unknown nature of the costs that will remain in the TIC, result in an excessive reallocation to transport.

232. The D.C. Circuit instructed us to revise our transport rate structure rules to be more consistent with cost-causation principles. There is conflicting evidence in the record concerning the nature of the costs contained within the residual TIC; these costs may be traffic sensitive or NTS and may be associated with common

line, transport or switching services. BA/NYNEX states, without explanation, that the costs in the TIC are NTS in nature. To the extent that some portion of the residual TIC has its origin in the methods used to separate cable and wire facilities between the regulatory jurisdictions, it seems likely that BA/NYNEX is partially correct in this assertion. The evidence, however, does not clearly resolve this issue.

233. If the costs remaining in the residual TIC are NTS, as BA/NYNEX suggests, then traffic-sensitive recovery could artificially raise per-minute rates for interstate access. These higher per-minute access rates could distort the market for interstate toll services by artificially suppressing demand for interstate toll services and by encouraging users that efficiently could make use of the network to instead seek other alternatives. Conversely, if costs remaining in the residual TIC are usage-sensitive, flat-rating may also create a distortion by encouraging inefficient overuse of interstate toll services. Because the limited evidence in the record suggests that at least some amount of the residual TIC represents NTS costs, and because we wish to see that consumers enjoy the benefits of usage of the network to the greatest extent possible, we find that we should err, if at all, on the side of NTS recovery of these costs. For elements not demonstrably reflecting usage-sensitive costs, therefore, we find, on balance, compelling policy arguments in favor of flat-rated pricing because usage-sensitive recovery of any NTS costs artificially suppresses demand for interexchange calling by inflating per-minute rates. In the absence of definitive evidence as to the nature of the residual TIC amounts, we conclude that the public interest would be better served by imposing these costs on IXCs on a flat per-line basis, rather than on a per-minute basis.

234. Accordingly, we seek to migrate the current usage-based charges into flat-rated charges as quickly as possible consistent with avoiding short-term market distortions. We do that by: (1) On July 1, 1997, drawing down the per-minute-of-use residual TIC charge by targeting the price cap productivity (X-factor) adjustment to the trunking PCI and, specifically, the TIC SBI, thus effectively spreading those residual TIC revenues, which otherwise would be recovered exclusively on a minute of use basis, among the universe of (both traffic-sensitive and NTS) access services and moving TIC recovery closer to flat-rated recovery; (2) starting in January 1998, recovering remaining residual TIC revenues through PICC charges each year, subject to the PICC cap; and (3) drawing down any remaining residual per-minute TIC revenues each July by targeting the annual X-Factor adjustments to those revenues.

235. The targeting of price cap productivity reductions to the TIC will be accomplished in the following manner. Because the price cap LECs will not have reallocated facilities-based costs contained in the TIC before they file tariffs to be effective July 1, 1997, we first direct the price cap LECs to compute their anticipated ''residual'' TIC amount by excluding revenues that are expected to be reassigned on a cost-causative basis to facilities-based charges in the future, pursuant to the transition plan described in this Order. To determine TIC amounts so excluded, NYNEX, BellSouth, U S West, and Bell Atlantic shall use the residual TIC percentage estimates contained in USTA's ex parte letter filed May 2, 1997, to compute their respective anticipated residual TICs. These percentages are as follows: NYNEX, 77.63 percent; BellSouth, 56.93 percent; U S West, 59.14 percent; and Bell Atlantic, 63.96 percent. SBC Communications shall use the cost data for SWBT, Pacific Bell, and Nevada Bell contained in its ex parte letter filed April 24, 1997 to estimate its residual TICs. These percentages, calculated from TIC data supplied, are: SWBT, 69.11 percent; Pacific Bell and Nevada Bell combined, 53.52 percent. Each remaining price cap LEC shall estimate a ''residual'' TIC in an amount equal to 55 percent of its current TIC revenues. For these remaining price cap LECs, we find that this 55 percent level represents a reasonable, but conservative estimate. The 55 percent level corresponds approximately to the lowest residual TIC percentage identified in the record, and three of the price cap LECs that submitted data on the record are within a few percentage points of this level. We therefore find that residual TIC estimates at the 55 percent level for companies that have not developed actual percentage estimates on the record will be reasonable, but will also minimize the risk that we will eliminate facilities-based TIC costs with targeted X-factor price cap reductions.

236. The ''GDP–PI minus X'' adjustments LECs ordinarily would apply to each of their price cap indices (i.e., revenues) for the July 1, 1997, annual filing shall be applied by LECs to reduce their calculated anticipated ''residual'' TIC revenues. For tariffs to become effective July 1, 1997, the price cap LECs shall calculate the annual price cap reduction resulting from the application of the productivity adjustment to each basket other than the interexchange basket, and shall sum the dollar effects of the adjustment. If the effect is to reduce PCIs, the dollar amount shall be targeted completely to the trunking basket PCI and the TIC SBI, without changing the PCIs or SBIs for any other basket or service category. The percentage reduction in the PCI and SBI shall equal the ratio of the total dollar effect of the price cap annual adjustment to the dollar value of the PCI and SBI, respectively. If the effect of the productivity adjustment would increase the PCIs, the PCIs shall be adjusted in their usual fashion, and no targeting to the TIC shall occur. This avoids exacerbating an already inefficient aspect of the access rate structure.

237. Price cap LECs will begin reallocation of facilities-based TIC components on January 1, 1998. At that time, the price cap LECs should all have actual cost data reflecting the facilities-based components of the TIC. If, at that time, any price cap incumbent LEC determines that its use of the applicable residual TIC estimate, above, resulted in more PCI reductions being targeted to the interconnection charge in its tariff filing to become effective on July 1, 1997, than were required to eliminate the per-minute interconnection charge, then that price cap LEC shall make necessary exogenous adjustments to its PCIs and SBIs to reverse the effects of the excess targeting.

238. For tariff filings to become effective July 1, 1998, and annually in July thereafter, all price cap LECs will have actual cost data reflecting the facilities-based components of the TIC and will be able to target reductions to actual anticipated residual per-minute TIC amounts without resort to the percentage estimates prescribed above. For these filings, ''GDP–PI minus X'' adjustments similar to those described above shall be targeted to the trunking basket PCI and the TIC SBI to reduce residual per-minute TIC amounts recovered through per-minute originating and terminating access charges.

239. To avoid the adverse effects of per-minute pricing of costs that may be NTS, we require price cap LECs to recover residual TIC amounts not otherwise eliminated by targeted X-factor reductions, described above, through the flat-rated PICC to the extent the PICC is below its ceiling. In order to ensure that primary residential and single line business subscribers do not pay more than their fair share of the residual TIC, however, we prohibit price cap LECs from charging a PICC on primary residential or single-line

business lines that recovers TIC revenues that exceed residual TIC revenues permitted under our price cap rules divided by the total number of access lines. As the PICC caps increase each year, more of the residual TIC charge can be included in the flat-rated PICC. Any residual TIC amounts that cannot be recovered through the PICC shall be recovered on a per-minute basis from originating traffic, subject to a cap on per-minute originating access charges, as explained in Section III.A, above. If this cap is exceeded, the residual TIC shall be recovered through per-minute terminating switched access rates. Although a portion of the residual TIC will be recovered through PICC charges, the TIC will remain in the trunking basket. Therefore, to ensure that excess headroom is not created in the trunking basket, price cap LECs shall include the TIC revenues received from the flat-rated PICC in calculating the API for the trunking basket and the SBI for the TIC.

240. The policies adopted when the TIC was created require incumbent LECs to assess the TIC on all minutes that interconnect with the incumbent LEC switched access network, including minutes that transit a CAP's transport network without using any incumbent LEC transport facilities. As we noted in the NPRM, and as some commenters assert, if the incumbent LEC's transport rates are kept artificially low and the difference is recovered through the TIC, competitors of the incumbent LEC pay some of the incumbent LEC's transport costs. In a recent arbitration between Teleport and US West, the Colorado Commission has precluded US West from imposing the TIC on competitors for the portion of transport that US West does not provide. *See* TCG Colorado Petition for Arbitration Pursuant to sec. 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with US West, Docket No. 96A–329T, Decision Regarding Petition for Arbitration, Decision No. C96–1186 (adopted November 5, 1996); TCG Colorado Petition for Arbitration Pursuant to sec. 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with US West, Docket No. 96A–329T, Order Denying Applications for Rehearing, Reargument, or Reconsideration, Decision No. C96–1344 (adopted December 18, 1996), at ¶ I.B.1.4. We find that our current policy, which requires competitive entrants to pay the TIC even in cases where it provides its own transport, is inconsistent with the procompetitive goals of the 1996 Act. We therefore modify our rules to permit incumbent LECs to assess any per-minute residual TIC charge only on minutes that utilize incumbent LEC transport facilities, and not on any switched minutes of CAPs that interconnect with the incumbent LEC switched access network at the end office.

241. *Other Approaches.* We reject alternative methods for recovering the TIC that were proposed in the record. The majority of the incumbent LEC parties supported recovering any remaining costs in the TIC by bulk billing such amounts to IXCs based on each IXC's share of revenues, or presubscribed lines. Other incumbent LECs proposed establishing ''public policy'' elements to recover the residual TIC. These approaches would insulate TIC costs from the pressures of the competitive market and guarantee incumbent LECs the recovery of these amounts, even where such costs have resulted from inefficiencies that the competitive market—but not regulators—detected and otherwise would eliminate. This would be inconsistent with the development of an efficient competitive market. Our resolution of the TIC will allow LECs a reasonable opportunity to recover their costs, without providing a guarantee. We also reject the idea of spreading the remaining costs recovered by the TIC proportionately over all transport services, as suggested by AARP, et al. As we noted earlier, some of the remaining costs in the TIC may implicate certain Commission decisions separating costs between the federal and state jurisdictions and thus may be related to services other than transport. We, therefore, believe that awaiting further consideration by a Joint Board is a more practical means of ultimately resolving the TIC issue.

242. Some parties have requested that a portion of the costs recovered by the TIC should be considered to be universal service costs. We do not find this argument persuasive. Elsewhere in this Order, we have reallocated the TIC's identifiable cost components. On the basis of the record before us, we cannot clearly associate the remaining TIC revenues with any particular facilities or services. The parties arguing that these costs are related to universal service have not made any clear showing as to the source of these costs or demonstrated why they believe that these TIC revenues are either costs of universal service that should be recovered from the universal service fund or constituent costs of supported services.

243. We have analyzed the effect of the reallocation of TIC costs and the new recovery procedures on small business entities, including small LECs and new entrants, and find that the changes will facilitate the development of a competitive marketplace by moving incumbent LEC rates toward cost-based levels and by eliminating the ability of incumbent LECs to assess the TIC on switched access minutes that do not use incumbent LEC transport facilities. These pricing revisions may create new opportunities for small entities wishing to enter the telecommunications market.

E. SS7 Signalling

1. Background

244. SS7 is a network protocol used to transmit signalling information over common channel signalling networks. As described in greater detail in the NPRM, signalling networks like SS7 establish and close transmission paths over which telephone calls are carried. Signalling networks are also used to retrieve information from remote data bases to enable credit card and collect calling. SS7 systems are also used to transmit information needed to provide custom local area signalling services like automatic call back.

245. An SS7 network consists of several primary components—signalling points, signal transport links, and dedicated lines used for access to an incumbent LEC's signalling network (signal links). Signalling points are nodes in an SS7 network that originate, transmit, or route signalling messages. There are three principal types of signalling points: service switching points (SSPs), service control points (SCPs), and signalling transfer points (STPs). An SSP is a switch that can originate, transmit, and receive messages for call setup and database transactions. An SCP serves as a database that stores and provides information used in the routing of calls, such as the line information database (LIDB) used to validate calling cards or the database that identifies the designated long-distance carrier for toll-free service. An STP is a specialized packet switch that performs screening and security functions and switches SS7 messages within the signalling network.

246. Signal transport links are facilities dedicated to the transport of SS7 messages within the incumbent LEC's signalling network. Finally, dedicated network access lines (DNALs) consist of dedicated circuits that transmit queries between the incumbent LEC's signalling network and the signalling networks of other individual carriers, such as IXCs. A carrier's DNAL is connected to an incumbent LEC's

signalling network through a port on an incumbent LEC's STP.

247. Under the interim transport rate structure, incumbent LECs charge IXCs and other access customers a flat-rated charge (dedicated signalling transport) under Part 69 for the use of dedicated facilities used to connect to the incumbent LEC's signalling network. This rate element has two subelements—a flat-rated signalling link charge for the dedicated network access line (dedicated signalling line) and a flat-rated STP port termination charge. Most other signalling costs, such as costs for switching messages at the STP and transmitting messages within the signalling network, are not recovered through facility-based charges and thus most, if not all, of these costs are embedded in the TIC or in the local switching charge and recovered through per-minute-of-use charges. Retrieval of information from databases for toll-free calls and LIDB databases, however, is charged on a per-query basis.

248. In the NPRM, we solicited comment on whether the Commission should revise its rate structure for SS7 services to reflect the SS7 rate structure implemented by Ameritech. In March, 1996, the Commission granted a waiver to Ameritech, allowing it to restructure its recovery of SS7 costs through four unbundled charges. These charges correspond to various functions performed by signalling networks: signal link, STP port termination, signal transport, and signal switching.

249. The Ameritech waiver was granted to allow Ameritech to realign its charges for SS7 services more closely with the manner in which such costs are incurred. Unbundling of SS7 services from transport and local switching ensures that transport and local switching customers do not pay for SS7 services they do not use. Unbundling also enables Ameritech to offer SS7 services to competing providers of local exchange and exchange access services without requiring the purchase of other elements that the competitors do not need. In support of its waiver petition, Ameritech noted that it had received numerous customer requests for such unbundling. It also explained that it had deployed equipment necessary for measuring third-party usage of its SS7 networks, enabling the company to bill its SS7 services separately from its switched access services.

250. The NPRM also requested comment on whether incumbent LECs should be allowed to impose separate charges for ISDN User Part (ISUP) messages and Transaction Capabilities Application Part (TCAP) messages. ISUP messages are used to set up and take down calls. For example, ISUP messages include the initial address message used to establish and close the transmission path used to carry a telephone call. TCAP messages, on the other hand, are used to carry information between SSPs that support particular services, such as toll free services, LIDB services and certain custom local area signalling services (CLASS) like automatic call back. We noted that differentiation between charges for ISUP and TCAP messages may be economically justified because TCAP messages tend to be shorter in average length and place lower demands on the signalling network that ISUP messages.

251. The NPRM also requested comment regarding the appropriate placement of SS7 signalling elements in price cap baskets. Currently, STP port termination rates and charges for the signalling link, or DNAL, are placed in the trunking basket. Because both services are dedicated to particular SS7 customers, rates for these elements are flat-rated. We requested comment on whether the STP port termination charge should be placed in its own service category in the traffic-sensitive basket. We noted that interconnectors can provide their own signalling link, exposing that service element to some measure of competition. The STP port termination, on the other hand, is relatively insulated from competitive pressures because it is part of the incumbent LEC's STP and must be purchased from the incumbent LEC under existing network architecture.

2. Discussion

252. As we noted in the *Ameritech SS7 Waiver Order*, the removal of SS7 costs from the local switching and transport interconnection charge rate elements would benefit access customers that pay for these services but do not actually use an incumbent LEC's signalling services. It would also benefit alternative local service providers by enabling them to purchase separate SS7 services from incumbent LECs to support their provision of competing local exchange or exchange access services. Unbundling the individual SS7 components into separate charges would further promote efficiency by ensuring that signalling charges more accurately reflect the costs of providing such services. Competitive service providers could limit their signalling costs by purchasing only the signalling elements they need. Despite these benefits, however, we are reluctant to impose on incumbent LECs the cost burden of installing metering or other equipment needed to measure third party usage of signalling facilities. In granting Ameritech a waiver to implement its unbundled SS7 rate structure, we noted that Ameritech had previously installed the equipment and other facilities needed to meter independent signalling usage. Although we encourage actions that would promote disaggregation and unbundling of SS7 services, we will not require incumbent LECs to implement such an approach and incur the associated equipment costs of doing so. The record indicates that, as a general matter, the costs of mandating the installation of metering equipment may well exceed the benefits of doing so.

253. Instead, we will permit incumbent LECs to adopt unbundled signalling rate structures at their discretion and acquire the appropriate measuring equipment as needed to implement such a plan. Specifically, incumbent LECs may implement the same unbundled rate structure for SS7 services that we approved in the *Ameritech SS7 Waiver Order.* We recognize, however, that other signalling rate structures may achieve the same benefits that are available under the Ameritech rate structure. Hence, an incumbent LEC may implement an unbundled signalling rate structure that varies from the approach implemented in the *Ameritech SS7 Waiver Order* by filing a petition demonstrating that the establishment of new rate elements implementing such a service is consistent with the public interest. We note, however, that variations in signalling rate structures among incumbent LECs could impose burdens on IXCs if IXCs must adapt to a diverse range of unbundled signalling rate structures. We anticipate that, if incumbent LECs choose to adopt unbundled rate structures for their SS7 network services, they will evaluate how the implementation of these plans will affect their prospective customers.

254. With respect to rate differentiation between ISUP and TCAP messages, the NPRM expressed the concern that imposing rate differentiation may be inconsistent with rate structure simplicity. Several commenters indicate that the costs of implementing rate differentiation would exceed the benefits of such an approach. We further note that commenters offered little, if any, general support for the adoption of rate differentiation. Accordingly, to avoid unnecessary complexity and to avoid the imposition of unnecessary regulatory costs, we will not impose a rate differential between ISUP and TCAP messages.

255. With respect to the placement of SS7 rate elements in price cap baskets, we have previously recognized that the

signalling link and the STP port termination are not subject to the same level of competition. As noted in the *Ameritech SS7 Waiver Order,* STP port termination is provided only by incumbents while the signalling link can be provided by SS7 customers themselves or by other alternative providers. Comments filed in this proceeding also acknowledge this competitive disparity. Although Ameritech discounts the risk that STP port termination charges would be used to offset price reductions for the signal link, it nevertheless acknowledges the existence of the competitive differential we suggested in the NPRM. Other commenters argue that the competitive disparity is sufficient to justify concerns that price cap LECs would adjust their rates to account for the competitive differential. Accordingly, we will establish a new STP port termination rate element in the traffic-sensitive basket. Placing these SS7 services in different price cap baskets will ensure consistency with the Commission's general approach of maintaining elements with similar competitive characteristics in the same service baskets.

F. Impact of New Technologies

256. The NPRM requested comment regarding the rate structure treatment of new technologies that enable new telecommunications services and, by enhancing the productivity of telecommunications facilities, lower prices for services in the future. These technologies, which we describe in greater detail in the NPRM, include synchronous optical networks (SONET), Asynchronous Transfer Mode (ATM) switching, and advanced intelligent networks (AIN). We invited commenters to recommend specific rate structure rules that would reflect the manner in which incumbent LECs incur costs when providing services utilizing such new technologies.

257. As a general matter, the Commission is reluctant to adopt detailed rules governing rate structures for recovering the cost of deploying advanced technologies. We note that, in the *Price Cap Third Report and Order,* we adopted rules that permit price cap LECs to petition the Commission for the establishment of one or more switched access rate elements to accommodate new services. Under these rules, petitioners must demonstrate either of the following: (1) that the new rate elements would be in the public interest; or (2) that another LEC has previously obtained approval to establish identical rate elements and that the original petition did not rely upon a competitive showing as part of its public interest justification. Because technological advancements emerge rapidly, the adoption of uniform rate structures corresponding to particular technologies may slow investment in the development of newer technologies or improvements in current technologies. Indeed, as a general matter, incumbent LECs oppose the adoption of uniform rate structures for new technologies, suggesting that strict uniform rules in this regard could inhibit development of such technologies. Accordingly, we will refrain from adopting in this Order specific rate structures with respect to SONET, AIN, or other new technologies. As noted above, however, our rules already accommodate rate element adjustments that may be needed on an ad hoc basis when technological advancements justify such modifications. As particular new technologies become used on a widespread basis, we can always consider whether there is a need for a uniform rate structure at that point.

IV. Baseline Rate Levels

A. Primary Reliance on a Market-Based Approach With a Prescriptive Backdrop and the Adoption of Several Initial Prescriptive Measures

1. Background

258. In the NPRM, we established a goal of encouraging efficient competitors to enter local exchange access markets so that incumbent LECs would face substantial competition for the entire array of interstate access services. As a particular service becomes subject to substantial competition from new providers, we proposed to remove that service from price cap and tariff regulation. We sought comment on two general approaches for a transition to reliance on substantial competition to ensure that interstate access charges are closely related to forward-looking economic costs: a ''market-based'' approach and a ''prescriptive'' approach. Under a market-based approach, we would permit market forces to operate as competition emerges, allowing an incumbent to change its prices in response to competitive entry. To that end, we proposed a two-phase approach in which incumbent LECs would be permitted certain pricing flexibility upon a showing that meaningful competitive entry is possible within a particular local exchange and exchange access market, followed by a further relaxation of price cap regulation when meaningful actual competition developed within the market. We did not propose, however, to abandon the possibility of using the prescriptive tools at our disposal in the event that competition does not develop in some places.

259. As an alternative to the proposed market-based approach, we also sought comment on a prescriptive approach, under which incumbent LECs would be required to change their prices for some or all exchange access services using specific measures adopted by the Commission to more accurately ensure that access charges are closely related to the economic costs of providing interstate access services. We also invited comment on whether the two approaches could be merged in some fashion. We emphasized that our ultimate goal under any approach, whether market-based, prescriptive or combined, is to remove from price cap regulation LEC services that are subject to substantial competition. Instead of price cap regulation, we expect eventually to rely on the operation of competitive local markets to prevent incumbent LECs from exercising market power, and thereby to protect consumers.

260. In this section, we endorse the use of a market-based approach generally. Our market-based approach will retain the protection afforded by price cap regulation, while relaxing particular restrictions on incumbent LEC pricing as competition emerges, thereby permitting the development and operation of competitive markets, which will maximize the efficient allocation of telecommunications services and promote consumer welfare. This section also explains how, if competition fails to emerge over time for certain access services in particular geographic areas, we will ensure that the rates for those services reflect the forward-looking economic costs of providing the services. In the NPRM, we sought comment on a number of specific issues concerning the timing and degrees of pricing flexibility and ultimate deregulation. We recognize that we must attend carefully to this task of granting incumbent LECs increased pricing flexibility commensurate with competitive developments, and we will resolve these issues of timing and degree in detail in a subsequent report and order in this docket, where we can more fully discuss these matters.

261. Elsewhere in this Order, we adopt or propose several measures that work within our current price cap structure to lower baseline access charge rate levels consistent with evidence that the revised rate levels better reflect the underlying costs of providing interstate access services. In Section IV.C below,

we order an exogenous cost reduction to reflect the completion of the amortization of equal access costs. In Section IV.D, we order reallocation of certain marketing and retail expenses and discuss the reallocation of GSF costs. We issue a further notice on GSF costs in Section VII. In the companion Price Cap Performance Review for Local Exchange Carriers and Transport Rate Structure and Pricing, Fourth Report and Order, CC Docket Nos. 94–1 and 91–213, FCC 97–159, _____ FR _____ (released May 8, 1997) (*Price Cap Fourth Report and Order*), which we also adopt today, we modify our current price cap plan by adopting a single productivity offset (X-Factor) of 6.5 percent and eliminating sharing while maintaining the low-end adjustment.

2. Discussion

262. The Commission's objective is the one set forth in the 1996 Act—''opening all telecommunications markets to competition.'' Therefore, we must ensure that our own regulations do not unduly interfere with the development and operation of these markets as competition develops. If we successfully reform our access charge rules to promote the operation of competitive markets, interstate access charges will ultimately reflect the forward-looking economic costs of providing interstate access services. This is so, in part, because Congress established in the 1996 Act a cost-based pricing requirement for incumbent LECs' rates for interconnection and unbundled network elements, which are sold by carriers to other carriers. As we have recognized, interstate access services can be replaced with some interconnection services or with functionality offered by unbundled elements. Because these policies will greatly facilitate competitive entry into the provision of all telecommunications services, we expect that interstate access services will ultimately be priced at competitive levels even without direct regulation of those service prices.

263. We decide that adopting a primarily market-based approach to reforming access charges will better serve the public interest than attempting immediately to prescribe new rates for all interstate access services based on the long-run incremental cost or forward-looking economic cost of interstate access services. Competitive markets are superior mechanisms for protecting consumers by ensuring that goods and services are provided to consumers in the most efficient manner possible and at prices that reflect the cost of production. Accordingly, where competition develops, it should be relied upon as much as possible to protect consumers and the public interest. In addition, using a market-based approach should minimize the potential that regulation will create and maintain distortions in the investment decisions of competitors as they enter local telecommunications markets. Finally, under section 254 of the 1996 Act, implicit universal service subsidies, wherever possible, are to be made explicit and supported by all carriers on an equitable and non-discriminatory basis. To the extent that any implicit subsidies remain in interstate access charges because it was not feasible to identify them or make them explicit, our market-based approach will have the effect of making those implicit subsidies subject to being competed away as competitors offer comparable services at prices that do not include the subsidies. In addition, we note that the rate structure changes we adopt today go a long way towards achieving such ends because the inefficiency produced by distortions in markets ''rises as a quadratic function of the relative price distortion [Scherer & Ross, *supra.*, at 662].'' Therefore, the first steps made toward removing distortions caused by our regulations will produce the greatest benefits.

264. The market-based approach to access charge reform that we adopt will not, as some parties assert, expose customers of interstate access services to the unfettered exercise of market power. We will continue to maintain the current mechanisms upon which we rely to ensure that rates for these services are ''just and reasonable [as required by section 201 of the Communications Act],'' and not unjustly or unreasonably discriminatory [as required by section 202 of the Communications Act]. Instead of exposing customers to harm, we expect that permitting incumbent LECs certain kinds of pricing flexibility in response to the development of competition will allow prices for interstate access services to adjust in ways that reflect the underlying economic costs of providing those services without moving outside the range of rates that are just and reasonable. This process of relaxing regulation as competition develops, and ultimately deregulating services subject to effective competition, is well established. For example, many of the types of pricing flexibility discussed in the NPRM are similar to forms of pricing flexibility we have in the past accorded incumbent LECs and IXCs facing increased competition in markets for particular services.

265. Economic teaching also leads to the conclusion that rates for interstate access services will generally move toward the forward-looking economic cost of providing such services in response to increased competition in local exchange and exchange access markets. In addition, competition will do a better job of determining the true economic cost of providing such services. As competitive entry becomes increasingly possible, IXCs that now purchase interstate switched access services from incumbent LECs will be able to bypass those services where the prices (interstate access charges) do not reflect the economic costs of providing the underlying services. Those IXCs can do this by entering the local markets themselves as local exchange service providers, thereby self-providing interstate access services for their new local exchange service customers. They can also seek out competitive providers of comparable services. As customers choose providers other than incumbent LECs as their local providers, interstate access services will come to be priced competitively. Incumbent LECs will have to respond to competitors' offerings with lower-priced access services of their own in order to retain customers that would otherwise switch to competitors' networks, further increasing the effect of competition on overall access charge payments.

266. The 1996 Act has created an unprecedented opportunity for competition to develop in local telephone markets. It also has provided this Commission with tools for opening markets to competition, and for implementing our market-based relaxation of regulation so that interstate access charges reflect forward-looking economic costs. We recognize, however, that competition is unlikely to develop at the same rate in different locations, and that some services will be subject to increasing competition more rapidly than others. The observation that competitive entry will occur in some places, and for some services, more rapidly than others is a corollary to the rule that firms in competitive markets seek to maximize their profits. To maximize profits, firms naturally seek out those customers and services on which they can generate the most profits. Therefore, some customers are naturally more desirable than others at any given point in time. As competitors attempt to gain the patronage of the customers offering the greatest profit opportunities, they offer lower-priced or more desirable services. These actions have the effect of reducing over time the profitability of serving those particular customers and, as this occurs, the relative profitability of serving other

customers or offering other services increases. Therefore, competitors begin seeking to serve these other customers, and entry occurs in new places, or for new services. Accordingly, we anticipate that competition will drive rates for some interstate access services toward more economically efficient levels more rapidly in some areas than rates for other services or in other areas. Where competition develops, we will provide incumbent LECs with additional flexibility, culminating in the removal of incumbent LECs' interstate access services from price regulation where they are subject to sufficient competition to ensure that the rates for those services are just and reasonable, and are not unjustly or unreasonably discriminatory.

267. We also recognize, however, that there will be areas and services for which competition may not develop. Therefore, we shall retain many of the existing safeguards afforded by our price cap regulation, including the productivity offset (X-Factor), which requires incumbent LECs to adjust their access charges to reflect changes in the economic cost of providing service. In addition, we also adopt a prescriptive ''backstop'' to our market-based approach that will serve to ensure that all interstate access customers receive the benefits of more efficient prices, even in those places and for those services where competition does not develop quickly. To implement our backstop to market-based access charge reform, we require each incumbent price cap LEC to file a cost study no later than February 8, 2001, demonstrating the cost of providing those interstate access services that remain subject to price cap regulation because they do not face substantial competition. The Commission will require submission of such studies before that date if competition is not developing sufficiently for our market-based approach to work. Studies should identify and quantify forward-looking costs, short-run and long-run, that are incremental to providing each such service, and also costs that are common as between various services. These studies are required only for non-competitive services; as stated above, we do not intend to regulate prices of services that are subject to substantial competition.

268. We have chosen this date in order to give competition sufficient time to develop substantially in the various markets for interstate exchange access services. We have also chosen this date to permit us and all interested parties to take into account the effects of implementing the substantial changes that we adopt in this Order and that we will be adopting elsewhere to satisfy the universal service goals in section 254. By this date, we also expect to have additional regulatory tools by which to assess the reasonableness of access charges. We may, for example, be able to establish benchmarks based on prices for the interstate access services for which competition has emerged, and use the prices actually charged in competitive markets to set rates for non-competitive services and markets. Carriers could be required either to set their rates in accordance with the benchmarks or to justify their rates using their cost studies.

269. We anticipate that the pro-competitive regime created by the 1996 Act, and implemented in the *Local Competition Order* and numerous state commission decisions, will generate competition over the next few years. Further, it would be imprudent to prejudge the effectiveness of those measures at creating competitive local markets. Rather than ignore or interfere with the effects of this developing competition on prices for interstate access services, we find that the public interest is best served by permitting emerging competition to affect access charge rate levels. In addition, the experience we gain from observing the effects of emerging competition on interstate access services will permit us more effectively and efficiently to implement any prescriptive measures that may be needed in the future to ensure that interstate access services remaining subject to regulation are priced in accordance with the forward-looking economic cost of providing those services.

270. Economic logic holds that giving incumbent LECs increased pricing flexibility will permit them to respond to competitive entry, which will allow prices to move in a way that they would not have moved were the pricing restrictions maintained. This can lead to better operating markets and produce more efficient outcomes. Deregulation before competition has established itself, however, can expose consumers to the unfettered exercise of monopoly power and, in some cases, even stifle the development of competition, leaving a monopolistic environment that adversely affects the interests of consumers. Therefore, it is important that we design our market-based approach carefully. We must, among other things, decide which, if any, of the rules setting forth specific competitive triggers and corresponding flexibility as proposed in the NPRM we should adopt. We will resolve these issues in the subsequent report and order in this docket.

271. As set forth in the summary of comments appended to this order, AT&T cites to *Farmers Union Central Exchange, Inc.* v. *FERC,* 734 F.2d 1486, 1508 (D.C. Cir.) (*Farmers Union), cert. denied, Williams Pipe Line Co.* v. *Farmers Union Central Exchange, Inc.,* 469 U.S. 1034 (1984), for the proposition that ''[r]eliance on competitive forces to constrain exchange access rates, particularly in the presence of strong indications that market forces will not produce the intended results, would be arbitrary and capricious and contravene the Commission's statutory duty to ensure just, reasonable, and nondiscriminatory rates.'' We disagree with AT&T's assertion. In *Farmers Union,* FERC had stated in its relevant order that ratemaking for oil pipelines should be used solely to prevent price gouging, and had interpreted the Congressional mandate of ''just and reasonable'' rates as requiring that rates be kept within the zone of commercial reasonableness, not public utility reasonableness. Under this interpretation, FERC had concluded that it would rely primarily on market forces to keep rates reasonable.

272. The court in *Farmers Union* recognized that ''[m]oving from heavy to lighthanded regulation * * * can be justified by a showing that * * * the goals and purposes of the statute will be accomplished through substantially less regulatory oversight,'' but objected to FERC's failure to establish that its new approach would satisfy the ''just and reasonable'' standard. The court rejected FERC's position that oil pipeline ratemaking should protect only against ''egregious exploitation and gross abuse'' as being inconsistent with the mandate that Congress had established for FERC. The court concluded that FERC had not shown that market forces were sufficient to rely upon in setting reasonable rates.

273. We reject AT&T's argument that our market-based approach to access charge reform is analogous to FERC's conduct at issue in *Farmer's Union.* Our access charge and price cap rules are designed to ensure that access charges remain within the ''zone of reasonableness'' defining rates that are ''just and reasonable,'' and our market-based approach will also be designed to implement this statutory requirement. It will not remove incumbent LECs from regulation immediately, but will implement deregulation in steps, as competitive conditions warrant. Throughout the transition to deregulation in the face of substantial competition, we will maintain many

safeguards against unjust or unreasonable rates, such as the price cap indices. We will deregulate incumbent LEC services only when it is reasonable to conclude that competition has developed to such an extent that the market will ensure just and reasonable rates.

274. Second, our market-based approach is an eminently reasonable method for pursuing our goal of promoting competition and ensuring the economically efficient pricing of interstate access services. As competition emerges, the market-based approach will permit access charges to move towards the levels that will prevail in competitive markets. During the transition to competitive markets, access services not subject to competition will remain subject to price cap regulation, and we will eventually prescribe rates for those services at forward-looking economic cost levels, to ensure that all consumers reap the benefits of economically-efficient prices. Unlike the FERC regulation at issue in *Farmers Union,* our market-based approach to promoting the development of competitive markets and economically-efficient pricing will not be based on ''largely undocumented reliance on market forces * * *.'' Instead, we will design our approach so that deregulation occurs only when the reliability of market forces can be fully determined with respect to a particular service. Finally, we observe that FERC's mandate in *Farmers Union* was one of rate regulation due to market failure and concern over monopoly power. In light of the 1996 Act, our mandate is no longer strictly or solely one of rate regulation. Congress has stated its desire to establish ''a pro-competitive, deregulatory national policy framework.'' Our market-based approach will be designed to coincide with and promote this objective.

275. *Price Squeeze Concerns Are Adequately Addressed.* Several parties have argued that current access charge rate levels create the conditions for an anticompetitive price squeeze when a LEC affiliate offers interexchange services in competition with IXCs. A price squeeze, as the term is used by these parties, refers to a particular, well-defined strategy of predation that would involve the incumbent LEC setting ''high'' prices for interstate exchange access services, over which the LEC has monopoly power (albeit constrained by regulation), while its affiliate is offering ''low'' prices for long-distance services in competition with the other long-distance carriers. Because interstate exchange access services are a necessary input for long-distance services, these parties argue that an incumbent LEC can create a situation where the relationship between the LEC's ''high'' exchange access prices and its affiliate's ''low'' prices for long-distance services forces competing long-distance carriers either to lose money or to lose customers even if they are more efficient than the LEC's affiliate at providing long-distance services. It is this nonremunerative relationship between the input prices and the affiliate's prices, and not the absolute levels of those prices, that defines a price squeeze. In the most extreme case, a price squeeze involves a monopolist setting input prices that are actually higher than its prices in the output market.

276. Price cap regulation of access prices limits the ability of LECs to raise the prices of the input services. Commenters raising price squeeze concerns argue, however, that a LEC's interexchange affiliate will still be in a position to implement a price squeeze by setting long-distance rates close to the rates for access services, thereby forcing IXCs to charge below-cost rates to retain customers. They argue that LECs' interexchange affiliates have lower costs of providing interexchange services because of their affiliation with monopoly providers of interstate access services, and not as a result of being more efficient. According to these commenters, the relevant economic costs of providing interstate interexchange services will be lower for the LEC affiliate offering interexchange services than for competing IXCs because it only has to recover the true economic cost of providing the interstate access services (since the owners of the LEC and its interexchange affiliate will want the two entities to maximize their joint profits), whereas the IXCs will be forced to pay interstate access charges that are above the true economic cost of providing the underlying services.

277. Absent appropriate regulation, an incumbent LEC and its interexchange affiliate could potentially implement a price squeeze once the incumbent LEC began offering in-region, interexchange toll services. Although no BOC affiliate may offer such services at this time, GTE, SNET, Sprint and other incumbent LECs do have affiliates offering such services. The incumbent LEC could do this by raising the price of interstate access services to all interexchange carriers, which would cause competing in-region carriers to either raise their retail rates to maintain their profit margins or to attempt to maintain their market share by not raising their prices to reflect the increase in access charges, thereby reducing their profit margins. If the competing in-region, interexchange providers raised their prices to recover the increased access charges, the incumbent LEC's interexchange affiliate could seek to expand its market share by not matching the price increase. The incumbent LEC affiliate could also set its in-region, interexchange prices at or below its access prices. Its competitors would then be faced with the choice of lowering their retail rates for interexchange services, thereby reducing their profit margins, or maintaining their retail rates at the higher price and risk losing market share.

278. We conclude that, although an incumbent LEC's control of exchange and exchange access facilities may give it the incentive and ability to engage in a price squeeze, we have in place adequate safeguards against such conduct. The Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79–252, Fifth Report & Order, 49 FR 34824 (September 4, 1984) (*Fifth Competitive Carrier Report and Order*), requirements aid in the prevention and detection of such anticompetitive conduct. In our recent Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order in CC Docket No. 96–149 and Third Report and Order in CC Docket No. 96–61, 62 FR _____ (released April 18, 1997) (*Dom/Nondom R&O*), we decided to retain the *Fifth Competitive Carrier Report and Order* separation requirements for incumbent LEC provision of in-region interLATA services. These requirements apply both to BOCs and to other incumbent LECs. In addition, as discussed in that order, BOC interexchange affiliates are subject to the safeguards set forth in section 272 of the Act.

279. The *Fifth Competitive Carrier Report and Order* separation requirements have been in place for over ten years, and independent (non-BOC) incumbent LECs have been providing in-region, interexchange services on a separated basis with no substantiated complaints of a price squeeze. Under these separation requirements, incumbent LECs are required to maintain separate books of account, permitting us to trace and document improper allocation of costs and/or assets between a LEC and its long-distance affiliate, as well as to detect discriminatory conduct. In addition, we prohibit joint ownership of facilities, which further reduces the risk

of improper allocations of the costs of common facilities between the incumbent LEC and its interexchange affiliate, as discussed at length in the *Dom/Nondom R&O* and the Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further NPRM, FCC 96–489 ¶¶ 159–62 (December 24, 1996) (*Non-Accounting Safeguards Order*), *on recon.*, FCC 97–52 (February 19, 1997), *recon. pending*, CC Docket No. 96–149, *petition for summary review in part denied and motion for voluntary remand granted sub nom., Bell Atlantic* v. *FCC,* No. 97–1067 (D.C. Cir. filed March 31, 1997), *petition for review pending sub nom., SBC Communications v. FCC,* No. 97–1118 (D.C. Cir. filed March 6, 1997) (held in abeyance pursuant to court order filed May 7, 1997), 62 FR 2991 (January 21, 1997) (addressing the Act's prohibition of BOC joint ownership with its interexchange affiliate pursuant to section 272). As we also discussed at length in those orders, the prohibition on jointly-owned facilities also helps to deter any discrimination in access to the LEC's transmission and switching facilities by requiring the affiliates to follow the same procedures as competing interexchange carriers to obtain access to those facilities. Finally, our requirement that incumbent LECs offer services at tariffed rates, or on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to section 251 reduces the risk of a price squeeze to the extent that an affiliate's long-distance prices would have to exceed their costs for tariffed services.

280. Current conditions in markets for interexchange services give us comfort that an anticompetitive price squeeze is unlikely to occur as a result of our decision not to prescribe immediately access charge rates at forward-looking economic cost levels. If an incumbent LEC does attempt to engage in an anticompetitive price squeeze against rival long-distance providers, the provisions of the Act should permit new entrants or other competitors to seek out or provide competitive alternatives to tariffed incumbent LEC access services. For example, under the provisions of section 251, a competitor will be able to purchase unbundled network elements to compete with the incumbent LEC's offering of local exchange access. Therefore, so long as an incumbent LEC is required to provide unbundled network elements quickly, at economic cost, and in adequate quantities, an attempted price squeeze seems likely to induce substantial additional entry in local markets. Accordingly, there should be a reduced likelihood that an incumbent LEC could successfully employ such a strategy to obtain the power to raise long-distance prices to the detriment of consumers.

281. Furthermore, even if a LEC were able to allocate improperly the costs of its affiliate's interexchange services, we conclude that it is unlikely that the LEC's interexchange affiliate could engage successfully in predation. At least four interexchange carriers—AT&T, MCI, Sprint, and LDDS WorldCom—have nationwide, or near-nationwide, network facilities that cover every LEC's region. These are large, well-established companies with millions of customers throughout the nation. It is unlikely, therefore, that one or more of these national companies can be driven from the market with a price squeeze, even if effectuated by several LECs simultaneously, whether acting together or independently. Even if it could be done, it is doubtful that the LECs' interexchange affiliates would later be able to raise, and profitably sustain, prices above competitive levels. As Professor Spulber has observed, ''[e]ven in the unlikely event that [LECs'' interexchange affiliates] could drive one of the three large interexchange carriers into bankruptcy, the fiber-optic transmission capacity of that carrier would remain intact, ready for another firm to buy the capacity at distress sale and immediately undercut the [affiliates'] noncompetitive prices.'' Daniel F. Spulber, *Deregulating Telecommunications,* 12 Yale J. Reg. 25, 60 (1995).

282. Finally, in addition to our regulations and the provisions of section 251 of the Act, the antitrust laws also offer a measure of protection against a possible price squeeze. Beginning with Judge Learned Hand's opinion in *United States* v. *Aluminum Co. of America (Alcoa),* 148 F.2d 416, 437–38 (2d Cir. 1945), a specific body of precedent has developed under federal antitrust law defining situations where a price squeeze can be actionable as a form of monopolization or attempted monopolization under Section 2 of the Sherman Act. 15 U.S.C. sec. 2. Under this precedent, a price squeeze can violate the antitrust laws where (1) a firm has monopoly power with respect to an ''upstream'' product; (2) it sells that product at ''higher than a 'fair price,' ''; (3) the product is a necessary input for the product being sold by other firms in competition with the monopoly or its affiliate in a ''downstream'' market; and (4) the monopolist offers the ''downstream'' product at a price so low that (equally-efficient) competitors cannot match the price and still earn a ''living profit.'' *Alcoa,* 148 F.2d at 437–38. Over time, courts have developed several tests for determining when the relationship between the two prices is sufficiently adverse to competitors that it constitutes an anticompetitive price squeeze. Although we believe it would not serve the public interest for us knowingly to permit a price squeeze to occur, and to rely entirely on the adequacy of antitrust law remedies to protect the public, we take comfort in the fact that such remedies exist should an anticompetitive price squeeze occur in spite of the safeguards we have adopted. In particular, although a price squeeze engaged in by several LECs, particularly if it involved more than one of the BOCs or GTE, could have a significant impact on interexchange competitors, we believe that the antitrust laws will act as a strong backstop to our own enforcement process so that the risk of such concerted activity is sufficiently limited. Because the rates charged by LEC interexchange affiliates will not be regulated, we do not believe that a court would reject a price squeeze claim under the antitrust laws on the grounds that '' 'normally' a price squeeze will not constitute an exclusionary practice in the context of a fully regulated monopoly.'' *Town of Concord* v. *Boston Edison Co.,* 915 F.2d 17 (1st Cir. 1990) (J. Breyer), *cert. denied,* _____ U.S. _____, 111 S. Ct. 1337 (1991). Indeed, the court in that case explicitly declined to address the ''special problem'' posed by a price squeeze allegation against a firm regulated in the input market and undercutting rivals' prices in the unregulated market where inputs are used.

283. *Other Concerns Raised by Commenters.* Several commenters raised concerns that our market-based approach to access charge reform might permit incumbent LECs to engage in cross subsidization, either between competitive and non-competitive services, or between interstate access services and other services such as video distribution. No evidence has been presented, however, indicating any likelihood that current price cap regulation, which is designed, in part, to prevent cross subsidization, might become less effective under a market-based approach to access charge reform. Those price cap regulations will remain in place until there is sufficient competition to prevent an incumbent LEC from charging rates that are not just and reasonable. Therefore, we find that the record does not contain substantial

evidence that a market-based approach to access charge reform is any less likely than current regulation to permit incumbent LECs to engage in unreasonable cross subsidization with their interstate access charges.

284. Finally, several commenters based their support for a market-based approach, in part, on arguments that it would reduce, or minimize, administrative burdens. Other commenters, on the other hand, opposed a market-based approach on the grounds that it would increase administrative burdens. Based on the record before us, however, we cannot reach a conclusion as to the relative administrative burdens of the two approaches. Some parts of our proposed market-based approach, such as grants of increased pricing flexibility as competitive conditions warranted, were modeled on waivers that we have granted within the context of our current price cap plan and would likely be necessary even if we had adopted a primarily prescriptive approach to access charge rate level reform. Similarly, some parts of a prescriptive approach, such as annual changes in price cap calculations, will necessarily be a part of our market-based approach. Accordingly, we can see no basis in this record for concluding that a market-based approach to access charge reform will be any more or less burdensome than any other alternative.

B. Prescriptive Approaches

1. Prescription of a New X-Factor

a. Background

285. In the NPRM, we observed that the Commission had initiated a rulemaking proceeding in the *Price Cap Fourth Further NPRM* to examine a number of proposals for revising the productivity offset component of the X-Factor, and to consider related issues such as eliminating sharing obligations and the low-end adjustment mechanism. We invited parties to discuss in this proceeding whether the record developed pursuant to the *Price Cap Fourth Further NPRM* justified increasing the productivity offset, and specifically invited comment on the effects of a forward-looking cost of capital and economic depreciation on total factor productivity (TFP) measurement.

b. Discussion

286. The commenters generally repeat arguments made in the *Price Cap Fourth Further NPRM* proceeding. For reasons explained in detail in our companion *Price Cap Fourth Report and Order,* we conclude that we should prescribe an X-Factor on the basis of total factor productivity studies, the difference between LEC input price changes and input price changes in the economy as a whole, and the 0.5 percent consumer productivity dividend (CPD). In the companion order we find that this results in an X-Factor prescription of 6.5 percent.

2. Other Prescriptive Approaches

a. Background

287. In the NPRM, we sought comment on four options for a prescriptive approach: reinitializing price cap indices (PCIs) to economic cost-based levels; reinitializing PCIs to levels targeted to yield no more than an 11.25 percent rate of return, or some other rate of return; adding a policy-based mechanism similar to the CPD to the X-Factor; or prescribing economic cost-based rates. We have decided above to rely primarily on a market-based approach, and impose prescriptive requirements only when market forces are inadequate to ensure just and reasonable rates for particular services or areas. We will determine the details of our market-based approach in a future Order. In that Order, we will also discuss in more detail what prescriptive requirements we will use as a backstop to our market-based access charge reform. In this section, we explain why we have decided not to adopt any specific prescriptive mechanism in this Order.

b. Rate Prescription

288. *Background.* We sought comment on prescribing new interstate access rates because simply reinitializing PCIs would not necessarily compel incumbent LECs to establish reasonable rate structures. We also noted, however, that prescribing access rates on a TSLRIC basis could raise common cost allocation issues to a much greater extent than did TELRIC pricing for unbundled network elements.

289. *Discussion.* In Section IV.A, above, we explain why we can and should rely primarily on market forces to cause interstate access rates to move toward economic cost levels over the next several years. Prescribing TSLRIC-based access rates would be the most direct, uniform way of moving those rates to cost. But, precisely because of its directness and uniformity, rate regulation can only be, at best, an imperfect substitute for market forces. Regulation cannot replicate the complex and dynamic ways in which competition will affect the prices, service offerings, and investment decisions of both incumbent LECs and their competitors. A market-based approach to rate regulation should produce, for consumers of telecommunications services, a better combination of prices, choices, and innovation than can be achieved through rate prescription. A market-based approach, with continued price cap regulation of services not subject to substantial competition and with the prescriptive backstop described in Section IV.A, is thus consistent both with the pro-competitive, deregulatory goals of the 1996 Act and with our responsibility under Title II, Part I of the Communications Act to ensure just and reasonable rates.

290. Furthermore, immediate prescription of TSLRIC-based rates would not necessarily move rates to those levels faster than the market-based approach and prescriptive backstop developed in Section IV.A. Some parties that favor a prescriptive approach have asserted that setting access rates immediately at TSLRIC levels would reduce incumbent LEC revenues by $10 billion or more. Were we to make such a rate prescription, we would consider phasing in rate reductions of that magnitude over a period of years, in order to avoid the rate shock that would accompany such a great rate reduction at one time. Finally, because we have adopted a more efficient rate structure for interstate switched access services, it is not necessary to prescribe new rates in order to achieve efficient rate structures, as TRA and TCI recommend. Accordingly, we will not prescribe TSLRIC-based access rates at this time.

c. Reinitialization of PCIs on a Rate-of-Return Basis

291. *Discussion.* We reject reinitialization on the basis of any rate of return at this time. As a general matter, the parties advocating a rate-of-return based reinitialization do not provide any persuasive reason for adopting that particular approach. They favor reinitialization largely because they believe interstate access charges should be lower than they are now. As explained above, however, we are adopting a primarily market-based approach to rate level adjustments. The prescriptive backstop to that approach will be based on TSLRIC cost studies and, most likely, applied to geographically deaveraged rates. That approach is more likely to result in rates that are aligned with economic costs than would reinitialization to a particular rate of return on an embedded cost rate base.

292. Moreover, because the basic theory of our existing price cap regime

is that the prospect of retaining higher earnings gives carriers an incentive to become more efficient, we believe that rate of return-based reinitialization would have substantial pernicious effects on the efficiency objectives of our current policies. In this regard, we have often expressed concern in past price cap orders that maintaining links between rate levels and a carrier's achieved rate of return would undercut the efficiency incentives price cap regulation was designed to encourage. In the *LEC Price Cap Order,* we rejected a so-called ''automatic stabilizer'' adjustment to the price cap index that—like reinitialization—would have permanently adjusted index levels downward in the event that carriers achieved earnings above a certain rate of return. Similarly, in our 1995 *LEC Price Cap Performance Review Order,* we cited as a disadvantage of AT&T's ''Direct Model'' method of determining the PCI formula's ''X-Factor'' the fact that ''a target rate of return is a critical factor in measuring productivity.'' And although we sought comment in the *Access Reform NPRM* on the question of rate of return-based reinitialization of the price cap indices, we once again expressed concern that such action ''could have a negative effect on the productivity incentives of the LEC price cap plan.'' We, of course, have authority to change our methods and theories of regulating LEC rates when we believe the purposes of the Communications Act would be better served by doing so. However, we find that, given our consistently critical past statements about rate of return-based adjustments to price caps, a decision now to reinitialize PCIs to any specified rate of return would further undermine future efficiency incentives by making carriers less confident in the constancy of our regulatory policies.

293. In declining to reinitialize PCIs on the basis of carriers' rates of return, we reject GSA/DOD's suggestion that access rates have been excessive merely because the earnings of most price cap carriers have exceeded 11.25 percent, and, in some cases, by substantial amounts. When the Commission adopted price cap regulation, it specifically permitted price cap carriers to earn in excess of 11.25 percent in order to encourage them to become more productive. The Commission also concluded that complaints alleging excessive earnings relative to costs will not lie as long as the carrier is in compliance with the sharing mechanism. In addition, we found in the *LEC Price Cap Performance Review Order* that access rates declined substantially under price cap regulation from 1991 to 1994, in spite of the increases in earnings to which GSA/DOD alluded. Furthermore, the vastly different results among companies show that the incentive plan we have for cost reduction (price caps) largely is working as predicted, whereas a rate-of-return-based scheme would have cost much in terms of inefficiency.

d. Reinitialization of PCIs on a TSLRIC Basis

i. Background

294. In the NPRM, we sought comment on reducing price cap PCIs by an amount equal to the difference between the incumbent LECs' PCIs and the revenues that would be produced by rates set at TSLRIC levels. We noted that a TSLRIC-based PCI reinitialization might be preferable to a TSLRIC-based rate prescription because it would not require us to prescribe common cost allocations. We also sought comment on whether or to what extent we could rely on TELRIC studies developed for pricing unbundled network elements, and whether we should initiate joint board proceedings to rely on state commissions to evaluate the incumbent LECs' TELRIC studies.

ii. Discussion

295. We have decided not to require incumbent LECs to reinitialize PCIs on a TSLRIC basis at this time. As we discuss in Section IV.A above, we expect market forces to develop as a result of the 1996 Act and to drive access rate levels to forward-looking economic costs. Furthermore, the record in this proceeding is unclear on whether there is an accurate and convenient method for determining TSLRIC for purposes of reinitializing PCIs at this time. Specifically, it is unclear whether the TELRIC studies used to develop unbundled network element prices can be used for access services.

e. Policy-Based X-Factor Increase

296. *Background.* In the NPRM, we observed that we adopted a consumer productivity dividend (CPD) to assure that some portion of the benefits of the incumbent LECs' increased productivity growth under price cap regulation would flow to ratepayers in the form of reduced rates. We sought comment on establishing a policy-based mechanism similar to the CPD to force access rates to cost-based levels.

297. *Discussion.* We do not require a policy-based X-Factor increase at this time for the same reason we do not require a TSLRIC-based PCI reinitialization; we expect market forces to control access charges effectively in a less intrusive manner.

298. BellSouth and GTE oppose increasing the CPD as an arbitrary and confiscatory measure. SNET claims that increasing the X-Factor merely because the price cap LECs have earned too much, or simply to drive rates down, is essentially an abandonment of price cap regulation, because it would punish incumbent LECs for their efficiency gains made under the price cap regime. BA/NYNEX and GTE contend that the X-Factor should be chosen to reflect reasonably expected incumbent LEC productivity growth rather than to achieve a specific rate reduction. We emphasize that we have done nothing in this Order to increase the X-Factor. In our companion *Price Cap Fourth Report and Order,* we prescribe a new X-Factor of 6.5 percent, but this prescription is based on detailed studies of LEC productivity growth and input price changes. We decline to increase the CPD, and we reject a proposal to set the X-Factor to target an industry average rate of return of 11.25 percent. Thus, none of our actions in either this Order or our companion Order can properly be characterized as an abandonment of price cap regulation, or as motivated merely by a desire to drive rates down.

C. Equal Access Costs

1. Background

299. In the NPRM, we solicited comment on whether to require incumbent price cap LECs to make an exogenous cost decrease to one or more of their PCIs to account for the completion of the amortization of equal access costs on December 31, 1993. We note that through the years, this issue has been referred to as ''equal access network reconfiguration'' or EANR costs. This is a misnomer, which we correct today. ''Equal access'' is the provision of exchange access to all interexchange carriers on an unbundled, tariffed basis that is equal in type, quality, and price to that provided to AT&T and its affiliates. Equal Access and Network Reconfiguration Costs, Memorandum Opinion and Order, 50 FR 50910 (December 9, 1985) at ¶ 18 (*Equal Access Cost Order*). ''Network Reconfiguration'' costs are those investments and expenses incurred in connection with structurally conforming the pre-divestiture AT&T network with the LATA boundaries mandated by the MFJ. Issues underlying network reconfiguration costs were resolved in the *Equal Access Cost Order* and have not been raised since.

300. Under court order, the BOCs and GTE were required to provide equal

access. *See United States* v. *AT&T*, 552 F. Supp. 131, 233 (D.D.C. 1982); *United States* v. *GTE Corp.*, 603 F. Supp. 730, 745 (D.D.C. 1984). This conversion, estimated at more than $2.6 billion, was largely completed by 1990, and involved both capital and non-capital expenditures. Under the *Equal Access Cost Order*, incumbent LECs were required to identify separately the incremental capital investments and the incremental non-capital-related expenses associated with the implementation of equal access. The *Equal Access Cost Order* directed that the capital investments, which it estimated to comprise approximately 55 percent of the $2.6 billion, be treated pursuant to ordinary accounting and ratemaking principles. The Commission determined that the remaining 45 percent of the expenditures—which were non-capitalized equal access expenses—required special treatment:

> [W]e are concerned that these expenditures will cause irregular and substantial fluctuations in revenue requirements associated with equal access. Because they are extraordinary, are for the greatest part expected to be incurred over the next few years, and, therefore, are likely to be distortive of financial results and rate requirements, we find that these equal access expenses should be deferred and amortized.

Equal Access Cost Order, 50 FR at 50914–15, ¶ 33. The Commission ordered that these equal access expenses be separately identified and recorded, and that they be written off over a period of eight years, ending December 31, 1993. *See* Equal Access and Network Reconfiguration Costs, Reconsideration, FCC No. 86–470 (released November 5, 1986) at ¶ 25 (*Equal Access Cost Reconsideration Order*). In the reconsideration of the *Equal Access Cost Order*, the Commission found that the specific termination date of the eight year amortization of these expenses would ''shorten the period during which the unamortized balances are entitled to earn a rate of return.'' *Id*. It is clear that the LECs' rate-of-return (ROR) rates included revenue recovery for both capitalized expenditures (recovered through the ordinary depreciation process) and non-capitalized expenses (recovered through the special amortization process). It is also clear that at the time the amortization was imposed, the Commission envisioned an end to the recovery for the amortized expenses and a subsequent decrease in ROR rates.

301. In converting to price cap regulation, the Commission found that equal access conversion was, in large part, completed and that the associated costs, which included both the capitalized expenditures and the amortized expenses, were embedded in the existing rates. As such, the Commission refused to grant LECs an exogenous increase for equal access costs, finding that these costs were already accounted for in the existing rates. The Commission also based its decision to deny an exogenous increase on its concern that exogenous treatment of equal access expenditures would create inappropriate incentives for the LECs to inflate the amounts spent on equal access. The Commission noted the difficulty of reviewing equal access costs, as well as the risk that incumbent LECs might willfully or inadvertently shift switched access costs into the proposed equal access category in order to benefit from the requested exogenous increase.

2. Discussion

302. We find that an exogenous cost decrease to account for completion of the amortization of equal access non-capitalized expenses is necessary and appropriate. Although we have addressed this issue in the past and declined to act, we now find that an exogenous decrease is merited. We recognize our decision departs from our past decisions that have declined to impose an exogenous decrease for the completed recovery of these costs. As discussed below, our decision today reverses those decisions and is based on an extensive record from this, and prior proceedings. Our decision today aligns our treatment of the completion of the amortization of equal access costs with two other similar amortizations that were ordered under ROR regulation and carried over into price cap regulation, namely, the exogenous decrease imposed for the completion of the amortization of depreciation reserve deficiencies, and the exogenous decrease imposed for the completion of the amortization of inside wire costs. We are convinced that this treatment is the proper method to ensure that ratepayers are not paying for costs that have already been completely recovered.

303. The need for an exogenous adjustment to account for the expiration of the equal access expense amortization stems from the different ways in which rates are established under ROR regulation, on the one hand, and price cap regulation, on the other hand, and from the Commission's decision to establish initial price cap levels at the outset of price cap regulation on the basis of existing ROR-derived rates. When converting from ROR regulation to price cap on regulation January 1, 1991, the Commission needed to select a set of ''baseline'' rate levels to which the price cap index of incremental cost changes would be tied. For that purpose, we chose the ROR-developed rates that were in effect on July 1, 1990. The Commission found that, in general, those rates served as an appropriate starting point for measuring subsequent incremental cost changes under price cap regulation, because they ''reflect[ed] the reasonable operation of ROR regulation.''

304. In two respects, however, the Commission recognized that existing rates did not reflect equilibrium ROR-derived rates, but rather reflected special corrective adjustments that we had ordered previously. In particular, the Commission noted that existing rates had embedded within them costs associated with Commission-ordered ''one-time'' amortizations of depreciation reserve deficiencies and inside wiring costs. Had ROR regulation continued, the rates subject to these amortizations would have been reduced when the amortizations were completed. To ensure that ratepayers under price caps would not be required permanently to bear these temporary Commission-ordered, ROR-derived rate adjustments, we directed LECs to make downward exogenous cost adjustments to their price cap indices upon the expiration of those amortizations.

305. Similarly, the Commission ordered amortization of equal access expenses, which also were reflected in baseline rates at the outset of price cap regulation. Under normal ROR ratemaking principles, those expenses—which, for the most part, already had been incurred before price cap regulation was initiated—would have been recovered in the BOCs' rates the same year they were incurred and would no longer have been reflected in rates at the time price caps were instituted. However, as explained supra, the Commission required the carriers to amortize these extraordinary expenses over eight years because of the potential fluctuations in revenue requirements associated with equal access. Thus these expenses remained embedded within BOC rates at the outset of price caps even though, for the most part, the extraordinary expenses themselves were no longer being incurred.

306. The specific question of whether the completely amortized equal access expenses should be treated exogenously has been presented to the Commission on a number of occasions. In the past, procedural impediments arising from our rules, as well as the lack of an adequate record, convinced us to decline to impose such treatment at that time. For example, when AT&T raised

the issue of downward adjustment for completed amortization of equal access expenses in an annual access charge tariff proceeding, the Common Carrier Bureau found that the issue was beyond the scope of the proceeding because it would require a substantive change to the price cap rules. Similarly, in response to AT&T's and MCI's revisiting the question in both the *First 1994 Annual Access Charge Order* and the *Second 1994 Annual Access Charge Order*, the Commission found that exogenous treatment would require a rule change to section 61.45(d) of the Commission's rules. Because no LEC had filed for a waiver of section 61.45(d), the Common Carrier Bureau found that the issue was not properly presented for investigation.

307. In denying the requests for procedural reasons, the Commission supported its decisions with various rationales. In some instances, these rationales appear now not to have been considered to a sufficient degree. In addressing equal access costs in the orders adopting price cap regulation, the Commission focused primarily on the question of whether future equal access investments and expenses should be treated exogenously because equal access had been compelled by regulatory (or judicial) order. We concluded, subject to consideration of waiver requests, that we should not accord exogenous cost treatment to such future equal access conversion costs, because of concerns that exogenous cost treatment would create disincentives to implement equal access in an efficient manner. We did not focus in detail on the logically distinct question of whether equal access expenses that were already embedded within baseline BOC rates pursuant to the temporary ''one-time'' amortizations (and thus raised no question with respect to future incentives) should be removed through exogenous adjustments when the amortizations expired. Instead, we relegated that issue to a footnote, which denied exogenous cost treatment on the basis of a skeletal analysis that makes no reference to our treatment of the depreciation reserve deficiency and inside wiring amortizations. In the footnote, it is clear that the Commission was not distinguishing between capitalized costs, which were properly treated as depreciated expenses, and non-capitalized expenses, which were actually amortized per the Commission's own requirement. The Commission framed the issue of a downward adjustment in terms of whether the completion of depreciation required a downward adjustment, querying ''whether the BOCs will experience any cost change in 1994 [at the completion of the amortization] that stems from factors beyond their control.'' In support of its implicitly negative answer, the Commission analogized to the absence of a price cap index change when a piece of equipment is fully depreciated, or when a carrier increased or decreased the speed with which it recovered investments. The Commission found that, ''[b]ased on a meager factual record presented on the issue of equal access expense, we are reluctant to depart from our practice of not adjusting PCI levels to reflect levels of cost recovery.''

308. The Commission's analysis at that time was incomplete. The *Equal Access Cost Order* and the *Equal Access Cost Reconsideration Order* explicitly recognized two components of equal access costs—capitalized, which were to be depreciated, and non-capitalized, which were extraordinary and were to be amortized over a set period. The Commission established different treatment for these two sets of costs based on policy reasons, and ordered an amortization schedule for the non-capitalized costs. The Commission's establishment of this schedule was beyond the incumbent LECs' control. The Commission's analogy to the lack of exogenous treatment for equipment depreciation and changes in the tempo of recovery should have only applied to the capitalized portion of the equal access costs.

309. The Commission explicitly stated in the *LEC Price Cap Order* that completed amortizations of depreciation reserve deficiencies require an exogenous downward adjustment. The Commission found that such an adjustment was necessary to ensure that ratepayers were not paying for a cost that no longer existed. Analytically, the amortized portion of equal access expenses should have been treated in the same fashion as the amortized depreciation reserve deficiency costs. The Commission's imposition of a downward exogenous adjustment for the completion of inside wire amortizations further supports our finding today that an exogenous decrease is appropriate and necessary for the completion of the amortization of equal access non-capitalized expenses.

310. We reject our prior analysis of amortized equal access costs and accord the expiration of equal access cost amortizations the same exogenous cost treatment given to the amortizations of the depreciation reserve deficiencies and inside wiring costs. Both of those amortizations were given exogenous cost treatment when they expired because they reflected temporary, one-time treatment of costs under ROR regulation that, due to the mid-stream switch to price cap regulation, would have become permanent (even though the costs already had been recovered) absent an exogenous cost adjustment. The same is true for equal access cost amortizations.

311. Because this is a rulemaking, we do not face the same procedural impediments as in some of our prior decisions, as explained supra. We determine that the record from this proceeding allows us to make a reasoned decision on this issue. We find that an exogenous decrease is necessary in order to adjust the price caps for the completed recovery of the specified equal access non-capitalized expenses that we required be amortized over an eight-year period. Because the current price cap index includes an expense that has now been completely recovered, the price cap should be adjusted downward to account its recovery. Simply stated, we find that ratepayers should not be forced to pay for a cost that, were it not for the way price cap regulation occurred in this instance, they would no longer be paying. By imposing a downward exogenous adjustment to adjust the PCI for the complete recovery of specific equal access expenses through amortization, we will avoid unfairly imposing a subsidy burden on ratepayers. Our decision in this matter will align charges more closely to costs.

312. Several commenters have argued that they continue to incur costs as a part of the provision of equal access. These ongoing costs are not at issue in the present proceeding. As explained above, the costs at issue were a set of costs that the Commission determined should be amortized for policy reasons. These costs were extraordinary and, if allowed to be imposed in the normal fashion, would have resulted in huge rate fluctuations. We consider the ongoing costs of providing equal access as part of the normal costs of providing telephone service. Exogenous treatment of these costs is unnecessary. In response to BellSouth's contention that the record is inadequate for us to make a decision about an exogenous decrease, we find that the current record provides a sufficient basis for our decision. Furthermore, we note that in the past, the record may have been sufficient, but, as explained above, the Commission's analysis was incorrect.

313. TCA and GCI are concerned about how the Commission will treat cost recovery for LECs that convert to equal access in the future. As we stated in the very first LEC Price Cap report

and order, LECs that have not received a bona fide request for equal access at the time they become subject to price cap regulation may request a waiver for special treatment of those special conversion costs when the time arises. *See* Policies and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313, First Report and Order, 54 FR 19836 (May 8, 1989).

314. We hereby direct price cap LECs to make a downward exogenous adjustment to the traffic sensitive basket in the Annual Access Tariff filing that takes effect on July 1, 1997 to account for the completed amortization of equal access expenses.

D. Correction of Improper Cost Allocations

1. Marketing Expenses

a. Background

315. Prior to 1987, incumbent LEC marketing expenses were allocated between the interstate and intrastate jurisdictions on the basis of local and toll revenues. In 1987, a Federal-State Joint Board recommended that interstate access revenues be excluded from the allocation factor used to apportion marketing expenses between the interstate and intrastate jurisdictions because marketing expenses are not incurred in the provision of interstate access services. Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, CC Docket No. 86–297, Recommended Decision and Order, 52 FR 15355 (April 28, 1987) (*Marketing Expense Recommended Decision*). The Commission agreed with the Joint Board's recommendation and adopted new procedures that allocated marketing expenses in Account 6610 on the basis of revenues excluding access revenues. MTS and WATS Market Structure, Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, CC Docket Nos. 78–72, 80–286, and 86–297, Report and Order, 52 FR 17228 (May 6, 1987). In petitions for reconsideration of the Commission's order, several incumbent LECs argued that the revised separations treatment of marketing expenses would result in a significant, nationwide shift of $475 million in revenue requirements to the intrastate jurisdiction. MTS and WATS Market Structure, Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 78–72, 80–286, and 86–297, Memorandum Opinion and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking, 52 FR 32922 (September 1, 1987) (*Marketing Expense Reconsideration Order*). On reconsideration, the Commission adopted for marketing expenses an interim allocation factor that includes access revenues, pending the outcome of a further inquiry by the Joint Board.

316. In the NPRM, we stated that some of the difference between the price cap LECs' interstate allocated costs and forward-looking costs may be traced to past regulatory practices that were designed to shift some costs from the intrastate jurisdiction to the interstate jurisdiction in order to further universal service goals. We observed that the Commission's decision in the *Marketing Expense Reconsideration Order* to allocate intrastate marketing costs to the interstate jurisdiction was an example of such past regulatory practices. We asked parties to comment on the extent to which the difference between price cap LECs' interstate allocated costs and forward-looking costs is a result of such decisions.

b. Discussion

317. Under current separations procedures, approximately 25 percent of price cap LECs' total marketing expenses are allocated to the interstate jurisdiction. We agree with parties that contend that, because marketing expenses generally are incurred in connection with promoting the sale of retail services, those expenses for the most part should be recovered from incumbent LEC retail services, which are found predominantly in the intrastate jurisdiction. Pursuant to section 410(c) of the Act, however, the Commission must refer any rulemaking proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations to a Federal-State Joint Board. We intend to initiate a proceeding to review comprehensively our Part 36 jurisdictional separations procedures in the near future. We will refer this issue to the Federal-State Joint Board in CC Docket No. 80–286 for resolution as part of that comprehensive review. We therefore do not reallocate these costs between the interstate and intrastate jurisdictions at this time.

318. In the Marketing Expense Recommended Decision, the Joint Board stated that the inclusion of access revenues in the allocation factor for marketing expenses is unreasonable because incumbent LECs do not actively market or advertise access services. Although parties contested the accuracy of this statement on reconsideration, the Commission did not assess incumbent LEC claims that the decision to exclude access revenues in the allocator for marketing expenses was based on an inaccurate perception of the extent to which LECs actively market or advertise exchange access services. The Commission instead referred marketing expense issues back to the Joint Board, with specific instruction to the parties to identify any Account 6610 marketing activities that are related to access services and any such activities that are related to a specific jurisdiction. We continue to recognize that some expenses recorded in Account 6610 may indeed be incurred in the provision of interstate access service, and that this is an issue that must be addressed by the Joint Board when it examines the appropriate allocation factor for marketing expenses. We note, however, that the Commission did not find in the *Marketing Expense Reconsideration Order* that the Joint Board's initial conclusion in the *Marketing Expense Recommended Decision* that incumbent LECs do not market or advertise access services to be inaccurate.

319. We conclude that price cap LECs' marketing costs that are not related to the sale or advertising of interstate switched access services are not appropriately recovered from IXCs through per-minute interstate switched access charges. Pending a recommendation by the Joint Board on a new method of apportioning marketing costs between the intrastate and interstate jurisdictions, we direct price cap LECs to recover marketing expenses allocated to the interstate jurisdiction from end users on a per-line basis, for the reasons we discuss below.

320. Recovering these expenses from end users instead of from IXCs is consistent with principles of cost-causation to the extent that price cap LEC sales and advertising activities are aimed at selling retail services to end users, and not at selling switched access services to IXCs. Recovery on a per-line basis, while perhaps not precisely reflective of the manner in which marketing costs are incurred, is preferable to the current rule requiring price cap LECs to recover their marketing expenses through per-minute access charges. A price cap LEC's retail marketing costs are not caused by usage of switched access services, and its efforts to sell additional lines, vertical features, and other retail services would only indirectly cause an increase in switched access usage. Per-minute recovery of retail marketing costs thus distorts prices in the long distance and local markets in the same way as does per-minute recovery of other NTS costs.

321. In the past, price cap LEC retail marketing may have focused on the sale of optional vertical features such as call

waiting and caller ID, and on features and services designed for business customers. As local competition develops, we would expect that sales expenses would be driven by the price cap LEC's need to respond to competition. In any case, it is beyond our jurisdiction to reassign retail marketing costs to retail services on a truly cost-causative basis. There is probably a relationship, however, between the number of lines purchased by an end user, particularly a business user, and the amount of effort a price cap LEC expends to sell services and features to that end user. Furthermore, as parties have observed in the record in this proceeding, price cap LECs actively market second lines to residential customers. We conclude, therefore, that the most efficient and cost-causative method legally available to this Commission at this time for recovery of price cap LEC retail marketing costs allocated to the interstate jurisdiction is to charge those end users to whom the price cap LECs' marketing is directed—multi-line business and non-primary residential line end users. We further note that by not permitting price cap LECs to recover these costs from primary residential and single-line business customers, we avoid potential universal service concerns that weigh against increasing charges on these end users.

322. Moreover, continued recovery of interstate-allocated marketing expenses in per-minute switched access charges would raise competitive concerns. Increasingly, IXCs will be competing with incumbent, price cap LECs in the provision of local exchange and exchange access services. By permitting incumbent, price cap LECs to recover from IXCs through interstate switched access charges their costs of marketing retail services, these potential competitors are forced to bear the incumbent, price cap LECs' costs of competing with the IXCs. Assigning recovery of marketing costs to end users, on the other hand, subjects these costs to the competitive pressures of the market.

323. Marketing expenses are currently recovered through all interstate access rate elements and the interexchange category in proportion to the investment originally assigned to these elements and categories by the Part 69 cost allocation rules. Special access and interexchange services are purchased by, and marketed to, retail customers. It is therefore appropriate to allow rates for those services to continue to include recovery of marketing expenses. Marketing expenses must be removed from all other rate elements by means of downward exogenous adjustments to the PCIs for the common line, traffic sensitive, and trunking baskets. With respect to the trunking basket, the exogenous adjustment shall not reflect the amount of any Account 6610 marketing expenses allocated to special access services. The service band indices (SBIs) within the trunking basket shall be decreased based on the amount of Account 6610 marketing expenses allocated to switched services included in each service category to reflect the exogenous adjustment to the PCI for the trunking basket.

324. After performing the appropriate downward exogenous adjustments described above to the PCIs in the common line, traffic sensitive, and trunking baskets, price cap LECs may recover the revenues related to the Account 6610 marketing expenses removed from these baskets by increasing the SLCs for multi-line business and non-primary residential lines. To prevent end-user charges from exceeding levels we have established earlier in this Order, the amount of marketing expenses to be recovered from multi-line business and non-primary residential lines in their SLCs shall be limited by the ceilings we establish for these SLCs in this Order. To the extent these ceilings prevent full recovery of these amounts, price cap LECs may recover these costs by increasing equally both the non-primary residential line PICC and the multi-line business PICC, not to exceed the ceilings on the PICC for non-primary residential and multi-line business lines. In the event the PICC ceilings prevent full recovery of these expenses, any residual may be recovered through per-minute charges on originating access service, subject to its ceiling. Finally, to the extent price cap LECs cannot recover their remaining marketing expenses through per-minute charges on originating access, any residual may be recovered through per-minute charges on terminating access service. Although these marketing expenses will be recovered through the SLC, they shall not be included in the base factor or considered common line revenues. To prevent price cap LECs from recovering these expenses from access services, we are establishing a separate basket for these marketing expenses.

325. We reject, however, AT&T's assertion that recovery of interstate-allocated marketing expenses through interstate access charges violates the wholesale pricing provisions contained in section 252(d)(3) of the Act. AT&T identifies and quantifies inappropriate retail expenses embedded in current interstate switched access rates based on the requirements of section 252(d)(3) and the criteria for wholesale rate cost studies outlined in the *Local Competition Order.* Section 252(d)(3) establishes a pricing standard for the wholesale provision of retail offerings to other carriers that resell the LEC retail services. Section 252(d)(3) does not apply to the pricing of interstate access, which is not a retail service.

2. General Support Facilities

a. Background

326. In the NPRM, we sought comment on other possible cost misallocations that may contribute to the difference between embedded costs and forward-looking costs allocated to the interstate jurisdiction. AT&T suggests that the allocation of embedded general support facilities (GSF) costs, including general purpose computer expenses, among access categories is one such misallocation. This allocation, AT&T contends, results in the inappropriate support of LECs' billing and collection service, which is a nonregulated, interstate service, through regulated access charges. AT&T estimates that $124 million of expenses recovered in interstate access support the nonregulated billing and collection category. Of the $124 million, $60.1 million is included in interstate switched carrier access, and $20.5 million is in interstate special access, with the remainder recovered by the SLC.

327. The GSF investment category in Part 36 includes assets that support other operations, such as land, buildings, vehicles, as well as general purpose computer investment accounted for in USOA Account 2124. Some incumbent LECs use general purpose computers to provide nonregulated billing and collection services to IXCs. Part 69 allocates GSF investment among the billing and collection category, interexchange category, and the access elements based on the amount of Central Office Equipment (COE), Cable and Wire Facilities (CWF), and Information Origination/Termination Equipment (IO/T) investment allocated to each Part 69 category. Because no COE, CWF, or IO/T investment is allocated to the billing and collection category, no investment in general support facilities, and thus no portion of general purpose computer investment, is allocated to the billing and collection category. Likewise, because expenses related to GSF investment are allocated in the same manner as GSF investment, no GSF expenses, including expenses

related to general purpose computers, are allocated to the billing and collection category. To the extent that costs are underallocated to the billing and collection category, incumbent LECs' regulated services recover through interstate access charges costs associated with nonregulated provision of billing and collection services.

b. Discussion

328. We agree with AT&T and WorldCom that the current allocation of GSF costs enables incumbent LECs to recover through regulated interstate access charges costs caused by the LECs' nonregulated billing and collection functions. By shifting some costs from interstate access services to the nonregulated billing and collection category, we would move interstate access rates closer to cost. The NPRM, however, may not have provided sufficient notice to interested parties that we would change in the allocation of LEC interstate costs between regulated interstate services and nonregulated billing and collection activities. We therefore seek comment on this issue in Section VII.B below.

V. Access Reform for Incumbent Rate-of-Return Local Exchange Carriers

A. Background

329. In the NPRM we concluded that, with limited exceptions, the scope of this proceeding should be limited to incumbent price cap LECs because these carriers face the potential of significant competition in the interstate exchange access market due to the new duties and obligations imposed upon them by the 1996 Act. We proposed limited exceptions that would subject all incumbent LECs to the rules addressing allocation of universal service support to the interstate revenue requirement, discussed in Section VI.D, below, and to the reforms to the transport rate structure, including the TIC, discussed in sections III.D., above. We invited comment on these tentative conclusions on the scope of this proceeding. We also sought comment on whether we should apply our proposed changes to the common line rate structure to rate-of-return incumbent LECs and whether we should update Part 69 access rules in light of various developments. We further invited comment on the effect of these proposals and tentative conclusions on small business entities, including small incumbent LECs and new entrants. We also noted that we would address access reform for rate-of-return carriers in a separate proceeding in 1997.

B. Discussion

330. We conclude that, with the limited exceptions discussed in Sections III.D and VI.D, the scope of this proceeding should be limited to price cap incumbent LECs. Price cap regulation governs almost 91 percent of interstate access charge revenues and more than 92 percent of total incumbent LEC access lines. Currently, all ten of the incumbent LECs with more than two million access lines and 13 of the 17 non-NECA incumbent LECS with more than 50,000 access lines are subject to price cap regulation. Therefore, even though this proceeding applies only to price cap incumbent LECs, it will nonetheless affect the vast majority of all access lines and interstate access revenues.

331. Small and rural LECs will most likely not experience competition as fast as incumbent price cap LECs. We do not expect small and rural LECs generally to face significant competition in the immediate future because, for the most part, the high cost/low-margin areas served by these LECs are unlikely to be the immediate targets of new entrants or competitors. Moreover, as we noted in the NPRM, all non-price cap incumbent LECs may be exempt from, or eligible for a modification or suspension of, the interconnection and unbundling requirements of the 1996 Act. By contrast, all incumbent LECs that are ineligible for section 251(f) exemption, suspensions, or modifications are incumbent price cap LECs. Because the latter incumbent LECs must fulfill the section 251 (b) and (c) duties to provide interconnection and unbundled elements to new entrants, they are likely to face significant competition in the interstate exchange access market before the small and mid-sized rate-of-return incumbent LECs face such competition.

332. We recognize that small and rural rate-of-return LECs face unique circumstances and that a few of these carriers may now have, or may soon receive, bona fide requests for interconnection. Although all rate-of-return carriers may not be completely insulated from competitive pressures, we are not persuaded by arguments that delaying the initiation of an access reform proceeding for these carriers until later this year will have a detrimental impact on their viability. A separate proceeding for small and rural rate-of-return LECs will provide us with the opportunity to conduct a comprehensive review of the circumstances and issues unique to these carriers.

333. We do not agree that Citizens Utilities should be exempt from some of the rules we adopt in this order for price cap companies. The decisions we reach here accommodate many of the concerns that Citizens Utilities, as well as a number of other price cap LECs that serve rural areas, voices in its pleadings. Although Citizens Utilities arguably may face different circumstances than other price cap LECs that serve larger urban and suburban populations, Citizens has indicated, by electing price cap regulation, that it believes it can achieve a higher rate of productivity than smaller rate-of-return LECs and that price cap regulation is more beneficial to it than rate-of-return regulation. Citizens Utilities has not demonstrated that the modifications we are adopting in this proceeding would necessarily affect it differently than other price cap LECs. If Citizens Utilities believes that it cannot remain financially viable as a price cap carrier under the revised access charge regime, it may petition for a waiver of the rule that makes its decision to elect price cap regulation irreversible.

334. We reject Centennial's suggestion that we adopt access reform modifications for all incumbent LECs but then grant waivers for small, rural LECs whose special circumstances warrant different accommodations. For the most part, rate-of-return LECs face a common set of complex issues, different than those faced by price cap LECs, that are better addressed in a separate proceeding. In that proceeding, we will address any differences that may exist between large and small rate-of-return carriers.

335. We therefore limit application of the rules we adopt in this proceeding to the incumbent price cap LECs, with limited exceptions. Because rate-of-return LECs will collect revenues from the new universal service support mechanisms, we address allocation of universal service support to the interstate revenue requirement for all incumbent LECs in Section VI.D. In addition, because rate-of-return incumbent LECs' transport rates were subject to the rules that were remanded by the court in *CompTel* v. *FCC*, the changes to the TIC that we adopt in Section III.D. pursuant to the court's remand, except for changes that require reallocation of costs to newly-created rate elements, will also apply to rate-of-return incumbent LECs. Finally, in order to prevent double recovery of the costs associated with providing access services to new entrants through the sale of unbundled network elements, we conclude in Section VI.A, below, that our exclusion of unbundled network elements from Part 69 access charges applies to all incumbent LECs.

VI. Other Issues

A. Applicability of Part 69 to Unbundled Elements

1. Background

336. In the NPRM, we requested comment regarding the potential application of Part 69 access charges to unbundled network elements purchased by carriers to provide local exchange services or exchange access services. We tentatively concluded that unbundled network elements should be excluded from such access charges. We noted that the 1996 Act allows telecommunications carriers to purchase access to unbundled network elements and to use those elements to provide all telecommunications services, including originating and terminating access of interstate calls. We further noted that the 1996 Act requires purchasing carriers to pay cost-based rates to incumbent LECs to compensate them for use of the unbundled network elements. Accordingly, we tentatively concluded that the requesting carrier paying cost-based rates to the incumbent LEC would have already compensated the incumbent LEC for the ability to deploy unbundled network elements to provide originating and terminating access.

2. Discussion

337. We will adhere to our tentative conclusion to exclude unbundled network elements from Part 69 access charges. This conclusion applies to all incumbent LECs. As we noted in the *Local Competition Order,* payment of cost-based rates represents full compensation to the incumbent LEC for use of the network elements that carriers purchase. We further noted that sections 251(c)(3) and 252(d)(1), the statutory provisions establishing the unbundling obligation and the determination of network element charges, do not compel telecommunications carriers using unbundled network elements to pay access charges. Moreover, these provisions do not restrict the ability of carriers to use network elements to provide originating and terminating access. Allowing incumbent LECs to recover access charges in addition to the reasonable cost of such facilities would constitute double recovery because the ability to provide access services is already included in the cost of the access facilities themselves. Excluding access charges from unbundled elements ensures that unbundled elements can be used to provide services at competitive levels, promoting the underlying purpose of the 1996 Act. If incumbent LECs added access charges to the sale of unbundled elements, the added cost to competitive LECs would impair, if not foreclose, their ability to offer competitive access services. The availability of access services at competitive levels is vital to the general approach we adopt in this Order, which relies on the growth of competition, including from competitors using unbundled network elements, to move overall access rate levels toward forward-looking economic cost. In addition, we note that excluding unbundled network elements from access charges benefits small entities seeking to enter the local service market by ensuring that they can acquire unbundled elements at competitive prices.

338. We disagree with suggestions offered by some commenters that access charges should be imposed on unbundled elements because cost-based rates for such elements would not recover universal service support subsidies built into the access charge regime. Although our plan to implement comprehensive universal service reform is not fully implemented, we believe excluding access charges from the sale of unbundled elements will not dramatically affect the ability of price cap LECs to fulfill their universal service obligations. First, competitors using unbundled network elements to provide interstate services will contribute to universal service requirements pursuant to section 254. Carriers receive no exemption from their obligation to contribute to universal service by using unbundled network elements. Second, rate structure modifications adopted in this Order—including reallocation of TIC costs, adoption of a mechanism to phase out the TIC, and raising multi-line SLCs—should reduce the impact on price cap LECs of excluding the recovery of TIC costs in the sale of unbundled network elements. Third, if unbundled network element prices are geographically deaveraged, LECs will receive higher prices when they sell unbundled network elements that embody higher costs. Fourth, because the difference between the level of access charges and the forward-looking economic costs of network elements may include more than universal service support, imposing access charges on the sale of unbundled network elements could recover from market entrants substantially more than amounts used to support universal service. Accordingly, we are not persuaded by suggestions that the universal service obligations of price cap LECs compel the imposition of access charges on the purchase of unbundled network elements by requesting carriers.

339. Although, in the *Local Competition Order,* we allowed application of certain non-cost-based access charges (the CCLC and a portion of the TIC) to unbundled elements, we limited the duration of such application to a transition period ending June 30, 1997 even if access and universal service reform were not completed by the end of the transition period. The transition period was limited in order to minimize the burden on competitive local service providers seeking to use unbundled network elements to offer the competitive services that the 1996 Act sought to promote. The interim application of certain access charges was also limited to non-cost-based charges because such charges, unlike facilities-based charges, were more likely to include subsidies for universal service. All facilities-based charges were completely excluded from unbundled network elements to prevent double recovery by incumbent LECs of the costs of these facilities when they are purchased by competitive carriers.

340. We are also unpersuaded by suggestions that access charges should be imposed on unbundled elements because provision of competitive service by rebundling the same network elements used by the incumbent LEC to provide access is equivalent to resale of a retail service. First, in the *Local Competition Order,* we recognized major differences between competition through the use of unbundled network elements and competition through resale of an existing retail service offered by an incumbent LEC. We explained, for example, that an entrant relying on unbundled elements rather than resale has the flexibility to offer all telecommunications services made possible by using network elements but also assumes the risk that end users will not generate sufficient demand to justify the investment. The entrant using a resale strategy, however, is limited to offering the retail service itself without the attendant investment risk. Thus, we reject the notion that the rebundling of network elements is equivalent to resale. Second, although we concluded in the *Local Competition Order* that IXCs must continue to pay access charges to incumbent LECs for access services when the end user is served by a competitive carrier reselling the incumbent LEC's retail services, our conclusion was based on the resale provisions of the 1996 Act which limit resale to retail services offered to subscribers or other customers who are not telecommunications carriers. The resale provision does not apply to non-

retail services, including access services, that may be offered using the same facilities. Unlike the provision of local exchange services, access services are not services that LECs provide directly to end users on a retail basis. To impose access charges on the sale of unbundled elements would contravene the terms of the resale provision by effectively treating exchange access as a service provided on a retail basis.

B. Treatment of Interstate Information Services

1. Background

341. In the 1983 *Access Charge Reconsideration Order,* the Commission decided that, although information service providers (ISPs) may use incumbent LEC facilities to originate and terminate interstate calls, ISPs should not be required to pay interstate access charges. (For purposes of this Order, providers of enhanced services and providers of information services are referred to as ISPs.) MTS and WATS Market Structure, CC Docket No. 78–72, Memorandum Opinion and Order, 48 FR 42984 (September 21, 1983) (*Access Charge Reconsideration Order*). In recent years, usage of interstate information services, and in particular the Internet and other interactive computer networks, has increased significantly. Although the United States has the greatest amount of Internet users and Internet traffic, more than 175 countries are now connected to the Internet. Network Wizards Internet Domain Survey, January 1997, available on the World Wide Web at <http://www.nw.com/zoneWWW/top.html>. As usage continues to grow, information services may have an increasingly significant effect on the public switched network.

342. As a result of the decisions the Commission made in the *Access Charge Reconsideration Order,* ISPs may purchase services from incumbent LECs under the same intrastate tariffs available to end users. ISPs may pay business line rates and the appropriate subscriber line charge, rather than interstate access rates, even for calls that appear to traverse state boundaries. The business line rates are significantly lower than the equivalent interstate access charges, given the ISPs' high volumes of usage. ISPs typically pay incumbent LECs a flat monthly rate for their connections regardless of the amount of usage they generate, because business line rates typically include usage charges only for outgoing traffic.

343. In the NPRM, we tentatively concluded that ISPs should not be required to pay interstate access charges as currently constituted. We explained that the existing access charge system includes non-cost-based rates and inefficient rate structures. We stated that there is no reason to extend such a system to an additional class of customers, especially considering the potentially detrimental effects on the growth of the still-evolving information services industry. We explained that ISPs should not be subjected to an interstate regulatory system designed for circuit-switched interexchange voice telephony solely because ISPs use incumbent LEC networks to receive calls from their customers. We solicited comment on the narrow issue of whether to permit incumbent LECs to assess interstate access charges on ISPs. In the companion *Notice of Inquiry* (*NOI*), we sought comment on broader issues concerning the development of information services and Internet access. *See* In the Matter of Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96–263, Notice of Inquiry, 62 FR 4657 (January 31, 1997) (*NOI*).

2. Discussion

344. We conclude that the existing pricing structure for ISPs should remain in place, and incumbent LECs will not be permitted to assess interstate per-minute access charges on ISPs. We think it possible that had access rates applied to ISPs over the last 14 years, the pace of development of the Internet and other services may not have been so rapid. Maintaining the existing pricing structure for these services avoids disrupting the still-evolving information services industry and advances the goals of the 1996 Act to ''preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.'' 47 U.S.C. sec. 230(b)(2).

345. We decide here that ISPs should not be subject to interstate access charges. The access charge system contains non-cost-based rates and inefficient rate structures, and this Order goes only part of the way to remove rate inefficiencies. Moreover, given the evolution in ISP technologies and markets since we first established access charges in the early 1980s, it is not clear that ISPs use the public switched network in a manner analogous to IXCs. Commercial Internet access, for example, did not even exist when access charges were established. As commenters point out, many of the characteristics of ISP traffic (such as large numbers of incoming calls to Internet service providers) may be shared by other classes of business customers.

346. We also are not convinced that the nonassessment of access charges results in ISPs imposing uncompensated costs on incumbent LECs. ISPs do pay for their connections to incumbent LEC networks by purchasing services under state tariffs. Incumbent LECs also receive incremental revenue from Internet usage through higher demand for second lines by consumers, usage of dedicated data lines by ISPs, and subscriptions to incumbent LEC Internet access services. To the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to state regulators.

347. Finally, we do not believe that incumbent LEC allegations about network congestion warrant imposition of interstate access charges on ISPs. The Network Reliability and Interoperability Council has not identified any service outages above its reporting threshold attributable to Internet usage, and even incumbent LEC commenters acknowledge that they can respond to instances of congestion to maintain service quality standards. Internet access does generate different usage patterns and longer call holding times than average voice usage. However, the extent to which this usage creates congestion depends on the ways in which incumbent LECs provision their networks, and ISPs use those networks. Incumbent LECs and ISPs agree that technologies exist to reduce or eliminate whatever congestion exists; they disagree on what pricing structure would provide incentives for deployment of the most efficient technologies. The public interest would best be served by policies that foster such technological evolution of the network. The access charge system was designed for basic voice telephony provided over a circuit-switched network, and even when stripped of its current inefficiencies it may not be the most appropriate pricing structure for Internet access and other information services.

348. Thus, in our review of the record filed in response to the *NOI,* we will consider solutions to network congestion arguments other than the incumbent LECs' recommendation that we apply access charges to ISPs' use of circuit-switched network technology. We intend rather to focus on new approaches to encourage the efficient offering of services based on new network configurations and technologies, resulting in more

innovative and dynamic services than exist today. In the *NOI*, we will address a range of fundamental issues about the Internet and other information services, including ISP usage of the public switched network. The *NOI* will give us an opportunity to consider the implications of information services more broadly, and to craft proposals for a subsequent NPRM that are sensitive to the complex economic, technical, and legal questions raised in this area. We therefore conclude that ISPs should remain classified as end users for purposes of the access charge system.

C. Terminating Access

349. In the NPRM, we requested comment regarding the regulation of terminating access. We noted that, unlike originating access, the choice of an access provider for terminating access is made by the recipient of the call. The call recipient generally does not pay for the call and, therefore, is not likely to be concerned about the rates charged for terminating access. We suggested that neither the originating caller nor its long-distance service provider can exert substantial influence over the called party's choice of terminating access provider. Thus, even if competitive pressures develop at the originating end as new entrants offer alternatives, the terminating end of a long-distance call may remain a bottleneck, controlled by the LEC providing access for a particular customer. We also recognized, however, that excessive terminating access charges could furnish an incentive for IXCs to enter the access market in order to avoid paying excessive terminating access charges.

1. Price Cap Incumbent LECs

a. Background

350. We requested comment on various alternative special methods for regulating the terminating access rates of price cap LECs. For instance, we sought comment on whether to establish a ceiling on the terminating access rates of price cap LECs equal to the forward-looking economic cost of providing the service. We suggested alternative methods for measuring forward-looking economic cost, including reference to prices in reciprocal compensation arrangements for the transport and termination charges of telecommunications under sections 251(b)(5) and 252(d)(2) or a requirement that terminating rates be based on a TSLRIC study or other acceptable forward-looking cost-based model.

b. Discussion

351. We believe that new entrants, by purchasing unbundled network elements or providing facilities-based competition, will eventually exert downward pressure on originating access rates assessed by incumbent LECs. We agree that excessive terminating access rates could encourage long-distance companies to avoid the payment of such charges by seeking to become the local exchange and exchange access provider for end user customers. These market developments, however, would not fully address the concerns expressed in the NPRM and reflected in comments with respect to the ability of incumbent LECs to charge unreasonable rates for terminating access.

352. We are also not convinced that a significant competitive impact would result from changes in calling patterns between pairs of callers. Commenters have not described any realistic way that users, by changing their calling patterns, could experience savings attributable to differing levels of terminating access charges paid by IXCs. Although one commenter points to high termination charges in foreign countries as affecting the market for overseas calls originating in the United States, such results are less likely to occur for domestic calls, which are much less expensive than international calls and are subject to geographic rate averaging and rate integration requirements. Thus, we are reluctant to base our approach on the expectation that a significant proportion of callers will implement such a strategy.

353. Accordingly, we are establishing regulatory requirements that will address the potential that incumbent LECs could charge unreasonable rates for terminating access. Specifically, we are adopting rules in this Order that, for price cap LECs, will limit recovery of TIC and common line costs from terminating access rates for a limited period, and then eliminate any recovery of common line and TIC costs from terminating access. Under this approach, beginning January 1, 1998, price cap LECs will recover common line and residual TIC revenues through a new flat charge, subject to a ceiling. Remaining common line and residual TIC revenues will then be first recovered through originating access rates, subject to a ceiling. Any remaining common line and residual TIC revenues may then be recovered through terminating rates. As the caps on SLCs applicable to non-primary residential lines and the PICC are raised, none of these residual revenues will be recovered through terminating access charges. When the increased SLCs and PICCs are fully implemented, recovery of these costs will be more susceptible to competitive forces because IXCs could seek to influence the end user's choice of its provider of local service, and the end user's choice of service provider will determine whether the incumbent LEC is able to recover these costs from the end user.

354. In addition, pending full recovery of all common line and residual TIC costs in flat rate SLCs and PICCs, this approach will put downward pressure on terminating access rates by lowering the overall service revenues derived from terminating access charges. Because competitive pressure is more likely to develop on the originating end of a long-distance call, we can rely to a greater extent on competitive forces to ensure just and reasonable rates under this approach by moving recovery of certain revenues from terminating access to originating access. By stripping terminating access rates of CCL and residual TIC charges and, pending full implementation of the new flat charges, placing more of the burden of TIC recovery on originating access rates, we reduce potential excesses in terminating access charges while exposing the CCL and residual TIC recovery to competitive pressures in the originating access market.

355. The NPRM described proposals linking terminating rates to originating rate levels or shifting costs from terminating to originating access charges. Some commenters support limiting price cap LEC terminating access rates to the level of the LEC originating access rates. If originating access charges are lowered because of competition, the ceiling on terminating access rates would be lowered as well, placing downward pressure on terminating rates. This approach, however, would not substantially affect terminating access rates where originating access rates have not responded to competitive inroads. Moreover, linking an incumbent LEC's terminating access rate to its own originating rate could reduce the incumbent LEC's incentive to lower its originating access rates. Thus, we decline to adopt this method of regulating terminating access rates.

356. The NPRM requested comment on the possibility of eliminating all charges for terminating access by shifting the burden of recovering all costs currently recovered in terminating access rates to originating access charges. We decline to adopt this approach because a complete shift of

terminating access costs to originating access conflicts with one of the basic objectives of this proceeding—to ensure that charges for access services reflect the manner in which the costs of providing those services are incurred. Switching costs, for example, should continue to be recovered in part from terminating access charges because those costs are traffic sensitive and are related to the volumes of both originating and terminating traffic. Moreover, we emphasize that, as discussed in Section III.A, the rate structure we are adopting, which will replace per-minute recovery of the CCL charge and the TIC with flat rate charges, helps to achieve our goal of ensuring that charges for access services reflect the manner in which costs are incurred. Our requirement that incumbent LECs recover a greater portion of common line and TIC costs in originating access rates pending full implementation of flat-rated charges will address concerns about the reasonableness of terminating access charges while providing price cap LECs sufficient latitude to recover the reasonable costs of deploying their facilities to provide terminating access services.

357. The NPRM also discussed the alternative of requiring price cap LECs to establish end user charges for terminating access. This approach would place direct responsibility for the cost of terminating access on the recipient of terminating access services and would expose terminating access to competitive pressures. We noted that wireless companies already charge called parties for receiving calls and requested comment on how we might implement a system of end user charges in the context of access reform and whether its implementation would increase the number of uncompleted calls due to a reluctance by called parties to accept the charges. We agree with commenters that such a change could prove disruptive to consumers of wireline services. After review of the record, which produced few, if any, advocates of such an approach, we conclude that we should not mandate at this time this change in current pricing practices for wireline service.

2. Non-Incumbent LECs

a. Background

358. In the NPRM, we requested comment about whether to impose ceilings on the terminating access rates of non-incumbent LECs. We stated in the NPRM that our policy since the *Competitive Carrier Proceeding* has consistently been that a carrier is non-dominant unless the Commission makes or has made a finding that it is dominant. We noted that, since the *Competitive Carrier Proceeding*, new entrants into the exchange access market have been presumptively classified as non-dominant because they have not been shown to exercise significant market power in their service areas. Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79–252, First Report and Order, 45 FR 76148 (November 18, 1980), Further Notice of Proposed Rulemaking, 46 FR 10924 (February 5, 1981), Second Further Notice of Proposed Rulemaking, 47 FR 17308 (April 22, 1982), Second Report and Order, 47 FR 37889 (August 27, 1982). At the same time, we stated that competitive LECs may possess market power over IXCs needing to terminate calls because the LEC controlling the terminating local loop is the only access provider available to the IXC seeking to terminate a long-distance call on that particular loop. We solicited comment on several alternatives, including whether we should use incumbent LEC terminating access rates as a benchmark to determine the reasonableness of competitive LEC terminating rates. We invited commenters to offer other approaches including, for example, whether we should establish a presumption of reasonableness if the competitive LEC's terminating access rate is no higher than the incumbent LEC's rate in the same geographic market.

b. Discussion

359. We recently noted that the test in deciding whether to apply dominant carrier regulation to a class of carriers is whether those carriers have market power. Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket Nos. 96–149 and 96–61, Second Report and Order in CC Docket No. 96–149 and Third Report and Order in CC Docket No. 96–61, FCC 97–142 (April 18, 1997) (*Dominant-Non-Dominant Order*). As we discussed in the *Dominant/Nondominant Order*, in determining whether a firm possesses market power, the Commission has previously focused on certain well-established market features, including market share, supply and demand substitutability, the cost structure, size or resources of the firm, and control of bottleneck facilities. Competitive LECs currently have a relatively small market share in the provision of local exchange and exchange access service. Nonetheless, at first blush, there is a concern that a competitive LEC may have market power over an IXC that needs to terminate a long-distance call to a customer of that particular competitive LEC. Therefore, we sought comment on whether and to what extent we should regulate the terminating access charges of competitive LECs.

360. We conclude, based on the record before us, that non-incumbent LECs should be treated as nondominant in the provision of terminating access. Although an IXC must use the competitive LEC serving an end user to terminate a call, the record does not indicate that competitive LECs have previously charged excessive terminating access rates. Nor have commenters provided evidence demonstrating that competitive LECs are, in fact, charging excessive terminating rates. Indeed, the record suggests that the terminating rates of competitive LECs are equal to or below the tariffed rates of incumbent LECs. In addition, the record does not show that competitive LECs distinguish between originating and terminating access in their offers of service. Therefore, it does not appear that competitive LECs have structured their service offerings in ways designed to exercise any market power over terminating access. Accordingly, the concerns expressed in the NPRM about the ability of competitive LECs to exercise market power in the provision of terminating access are not substantiated in the record.

361. Further, as competitive LECs, which have a small share of the interstate access market, attempt to expand their market presence, the rates of incumbent LECs or other potential competitors will constrain the terminating access rates of competitive LECs. Specifically, competitive LECs compete with incumbent LECs whose rates are regulated. The record indicates that long-distance carriers have established relationships with incumbent LECs for the provision of access services, and new market entrants are not likely to risk damaging their developing relationships with IXCs by charging unreasonable terminating access rates. This is especially true with respect to competitive access providers seeking to maintain or expand their access transport, special access, or other services apart from switched access.

362. In addition, we believe that overcharges for terminating access could encourage access customers to take competitive steps to avoid paying unreasonable terminating access charges. If, for example, a competitive

LEC consistently overcharged an IXC for terminating access, the IXC would have an incentive to enter a marketing alliance with another competitive LEC in the same market or in other geographic markets where the overcharging competitive LEC seeks to expand. Although high terminating access charges may not create a disincentive for the call recipient to retain its local carrier (because the call recipient does not pay the long distance charge), the call recipient may nevertheless respond to incentives offered by an IXC with an economic interest in encouraging the end user to switch to another local carrier. Such an approach could have particular impact when the IXC has significant brand recognition among consumers. Moreover, as noted in the NPRM, excessive terminating access charges could encourage IXCs to enter the access market in an effort to win the local customer. We believe that the possibility of competitive responses by IXCs will have a constraining effect on non-incumbent LEC pricing.

363. Thus, we will not adopt at this time any regulations governing the provision of terminating access provided by competitive LECs. Because competitive LECs have not charged unreasonable terminating access rates, and because they are not likely to do so in the future, competitive LECs do not appear to possess market power. Thus, the imposition of regulatory requirements with respect to competitive LEC terminating access is unnecessary. We similarly find no reason to adopt a presumption of reasonableness where a competitive LEC's terminating access rates are less than its rates for originating access or less than the incumbent LEC's terminating access rates. Instead, if we need to examine the reasonableness of competitive LEC terminating access rates in an individual instance, we can do so taking into account all relevant factors including relationships to other rates. Thus, if an access provider's service offerings violate section 201 or section 202 of the Act, we can address any issue of unlawful rates through the exercise of our authority to investigate and adjudicate complaints under section 208. On the basis of the current record, we conclude that reliance on the complaint process will be sufficient to assure that non-incumbent LEC rates are reasonable. We emphasize that we will not hesitate to use our authority under section 208 to take corrective action where appropriate.

364. We will be sensitive to indications that the terminating access rates of competitive LECs are unreasonable. The charging of terminating access rates above originating rates in the same market, for example, may suggest the need to revisit our regulatory approach. Similarly, terminating rates that exceed those charged by the incumbent LEC serving the same market may suggest that a competitive LEC's terminating access rates are excessive. If there is sufficient indication that competitive LECs are imposing unreasonable terminating access charges, we will revisit the issue of whether to adopt regulations governing competitive LEC rates for terminating access.

3. ''Open End'' Services

365. In some cases, an IXC is unable to influence the end user's choice of access provider for originating access services because the end user on the terminating end is paying for the call. For example, charges for the ''open end'' originating access minutes for 800 or 888 services are paid by the recipient of the call. Consequently, the Commission has treated incumbent LEC originating ''open end'' minutes as terminating minutes for access charge purposes. The NPRM solicited comment on whether such regulatory treatment should be retained for ''open end'' services under which terminating access rates serve as originating access rates, and whether this approach should be extended to competitive LECs.

366. We continue to believe that ''open end'' originating minutes should be treated as terminating minutes for access charge purposes. Although few comments were filed regarding this issue, commenters addressing this matter advocate retention of the current regulatory approach. By continuing to treat ''open end'' originating minutes as terminating minutes for access charge purposes, we recognize that access customers have limited ability to influence the calling party's choice of access provider. Accordingly, access charges for these ''open end'' minutes will be governed by the requirements we adopt in this Order applicable to terminating access provided by incumbent LECs. Thus, residual common line charges and the per-minute TIC will not be recovered through ''open end'' originating minutes except to the extent such recovery is permitted under the rules described in Section III.A of this Order.

D. Universal Service-Related Part 69 Changes

367. In the NPRM, we recognized that, because of the role that access charges have played in funding and maintaining universal service, it is critical to implement changes in the access charge system together with complementary changes in the universal service system. In this section, we address the manner in which incumbent LECs must adjust their interstate access charges to reflect the universal service support mechanisms adopted in the *Universal Service Order.*

1. Background

368. In November 1996, pursuant to section 254 of the Act, the Federal-State Universal Service Joint Board issued its recommendations to the Commission for reforming our system of universal service so that universal service is preserved and advanced, but in a manner that permits the local exchange and exchange access markets to move from monopoly to competition. In our *Universal Service Order,* we are adopting most of the Joint Board's recommendations relating to the support of rural and high cost areas.

369. Section 254 of the Act requires that any federal universal service support provided to eligible carriers be ''explicit'' and recovered on an ''equitable and nondiscriminatory basis'' from all telecommunications carriers providing interstate telecommunications service. In our companion *Universal Service Order,* we agree with the Joint Board that these programs must be replaced with universal service support mechanisms that satisfy section 254.

370. Currently, there are three mechanisms designed expressly to provide support for high cost and small telephone companies: the Universal Service Fund (high cost assistance fund), the Dial Equipment Minutes (DEM) weighting program, and Long Term Support (LTS). An incumbent LEC is eligible for high cost assistance from the current Universal Service Fund if its embedded loop costs exceed 115 percent of the national average loop cost. This program is funded entirely by IXCs. DEM weighting assistance is an implicit support mechanism that permits LECs with fewer than 50,000 access lines to apportion a greater proportion of these local switching costs to the interstate jurisdiction than larger LECs may allocate. Finally, the existing LTS program supports carriers with higher-than average subscriber line costs by providing carriers that are members of the NECA pool with enough support to enable them to charge IXCs only a nationwide average CCL interstate access rate. LTS payments reduce the access charges of smaller, rural incumbent LECs participating in the loop-cost pool by raising the access

charges of non-participating incumbent LECs.

371. In the NPRM, we sought comment on whether incumbent LECs' access charges must be adjusted to reflect elimination of LTS contribution requirements and receipt of explicit universal service funds in order to prevent incumbent LECs from being compensated twice for providing universal service. We proposed a downward exogenous cost adjustment for price cap incumbent LECs to reflect elimination of LTS contribution requirements and any revenues received from any new universal service support mechanisms, and sought comment on how interstate costs must also be reduced to account for explicit universal service support.

2. Discussion

372. In our companion *Universal Service Order,* we conclude that a carrier will continue to receive universal service support based upon the existing LTS, high cost, DEM weighting mechanisms, until the carrier begins to receive support based upon forward-looking economic cost. In the following sections, we will discuss the manner in which incumbent LECs must reduce their interstate access charges to reflect the elimination of the obligation to contribute to LTS, increase their interstate access charges to permit recovery of the new universal service obligation, and, to the extent necessary, adjust their interstate access charges to account for any additional universal service funds received under the modified universal service mechanisms.

a. Removal of LTS Obligation From Interstate Access Rates

373. In our companion *Universal Service Order,* we agree with the Joint Board that LTS payments constitute a universal service support mechanism that is inconsistent with the Act's requirement that support be collected from all providers of interstate telecommunications services on an equitable and non-discriminatory basis and be available to all eligible telecommunications carriers. In that order, we conclude that LTS should be removed from the interstate access charge system. We provide, instead, for recovery of comparable payments from the new federal universal service support mechanisms.

374. Currently, only incumbent LECs that do not participate in the NECA CCL tariff (non-pooling incumbent LECs) make LTS payments and only incumbent LECs participating in the NECA CCL tariff receive LTS support. Non-pooling incumbent LECs' contributions to the common line pool are set annually based on the total projected amount of LTS, converted to a monthly payment amount. Non-pooling incumbent LECs recover the revenue necessary for their LTS contributions through their CCL charges. We agree with commenters that argue that, to the extent we do not reduce interstate access revenues by the amount of LTS contribution currently recovered in the rates, incumbent LECs will double recover. We therefore conclude that incumbent LEC interstate access charges must be reduced to reflect elimination of the obligation to contribute to LTS.

375. Because payments from the existing LTS mechanism will cease on January 1, 1998, incumbent LECs should no longer contribute to the existing LTS fund after that date. For price cap LECs, which were requested to stop participating in the NECA Common Line tariff before coming under price cap regulation, LTS contributions were included in the common line revenue requirement when the PCI for the common line basket was established. We conclude that price cap LECs must make a one-time downward exogenous adjustment to the PCI for the common line basket to account fully for the elimination of their LTS obligations. This exogenous adjustment shall be made in a manner consistent with section 61.45 and other relevant provisions of the Commission's rules.

376. Non-pooling, rate-of-return LECs recover their LTS contributions in the common line revenue requirement. Because current LTS contributors will no longer be making such contributions after January 1, 1998, their CCL charges should be adjusted to account for this change. Rate-of-return LECs that formerly made LTS contributions should recompute their common line revenue requirements based on the elimination of their LTS obligations, and adjust their CCL charges accordingly.

377. We note that the replacement of LTS with comparable support from the new universal service support mechanisms requires us to amend the NECA Common Line tariff rules, which establish the CCL for pooling members at the average of price cap LECs' CCL charges. Under the current LTS support system, NECA annually projects the common line revenue requirement, including an 11.25 percent return on investment, for incumbent LECs that participate in the common line pool. NECA then computes the total amount of LTS support needed by subtracting the amount pooling carriers will receive in CCL revenues and SLCs from the pool's projected revenue requirement, after removing pay telephone costs and revenues. Our rules currently provide that the NECA CCL tariff be set to recover the average of price cap LECs' CCL charges. If we were to retain this rule, our decision eliminating LTS obligations for price cap LECs and requiring them to reduce their CCL charges accordingly would automatically reduce the CCL revenues of NECA pool members. Further, reductions would occur as price cap LECs implemented our decisions in Section III of this Order, which restructures the common line rate structure for price cap LECs to recover common line costs through flat-rated charges instead of the per-minute CCL charge. Because we have deferred consideration of access reform for non-price cap LECs and did not seek comment on this issue in the NPRM, we must address this issue in a future proceeding that undertakes access reform for small, non-price cap LECs.

b. Recovery of New Universal Service Obligations

378. In the *Universal Service Order,* we conclude that assessment of contributions for the interstate portion of the high cost and low-income support mechanisms shall be based solely on end-user interstate revenues, and that assessment of universal support for eligible schools, libraries, and rural health care providers shall be based on interstate and intrastate total end-user revenues. As to the manner in which carriers may recover their contributions to the universal service fund, in our *Universal Service Order* we conclude that carriers may recover universal service contributions via interstate mechanisms. In this Section, we address the manner in which incumbent price cap LECs may recover their universal service contributions. We address non-price cap LECs' recovery of universal service contributions in Section XIII.F of the *Universal Service Order.*

379. Price cap LECs may treat their contributions to the new universal service mechanisms, including high cost and low-income support and support for eligible schools, libraries, and health care, as exogenous changes to their price cap indices (PCIs). Because the only interstate revenues that will serve as the basis for assessing universal service contributions in 1998 will be end-user revenues, we find that price cap LECs recovering their universal service obligation through interstate access charges must recover those contributions in the baskets for services that generate end-user interstate revenues. Because price cap LECs do

not recover revenues from end users of services in all baskets, the exogenous adjustment should not be across-the-board. The baskets containing end-user interstate services are the common line, interexchange, and trunking baskets. The end-user charges assessed on services in the common line basket are recovered through the SLC; in the interexchange basket, end-user charges are recovered through per-minute toll charges; and in the trunking basket, end user charges are recovered through special access service provided directly to end users. Price cap LECs electing to recover their universal service obligation through interstate access charges must therefore apply the full amount of the exogenous adjustment among these three baskets on the basis of relative size of end-user revenues. We note, however, that the tandem-switched transport, interconnection charge, and tandem switch signalling service categories in the trunking basket do not recover end-user interstate revenues. In order to prevent recovery from customers of these services, the service band indices (SBI) for these service categories should not be increased to reflect the exogenous adjustment to the PCI for the trunking basket. To reflect the exogenous adjustment to the trunking basket PCI, price cap LECs should, instead, increase the SBIs for the remaining service categories in the trunking basket based on the relative end-user interstate revenues generated in each service category. The four remaining service categories in the trunking basket are as follows: (1) voice grade entrance facilities, voice grade direct-trunked transport, voice grade dedicated signalling transport, voice grade special access, WATS special access, metallic special access, and telegraph special access services; (2) audio and video service; (3) high capacity flat-rated transport, high capacity special access, and DDS services; and (4) wideband data and wideband analog services.

380. In 1999, the percentage of price cap LECs' revenues that will be assessed for universal service support may increase as a result of the anticipated increases in high cost, low-income support and support for schools, libraries, and health care in 1999. Price cap LECs shall therefore perform an upward exogenous adjustment to the PCIs for the common line, interexchange, and trunking baskets in the same manner as the exogenous adjustment performed in 1998, to reflect any change in the assessment rate in 1999.

c. Adjustments to Interstate Access Charges to Reflect Additional Support From the Modified Universal Service Mechanisms

381. In our *Universal Service Order,* we conclude that the federal universal service mechanism should support 25 percent of the difference between the forward-looking economic cost of serving the customer and the appropriate revenue benchmark. We further conclude in that order that 25 percent approximates the portion of the cost of providing the supported network facilities that would be assigned to the interstate jurisdiction, and that, by funding these interstate costs, we will ensure that federal implicit universal service support is made explicit. Consistent with our decision in the *Universal Service Order* to fund only interstate costs through the federal universal service fund, we direct incumbent LECs to use any universal service support received from the new universal service mechanisms to reduce or satisfy the interstate revenue requirement otherwise collected through interstate access charges.

382. *Non-Rural Carriers.* In our *Universal Service Order,* we conclude that, until a forward-looking economic cost methodology takes effect on January 1, 1999, non-rural carriers will continue to receive high cost assistance and LTS amounts based on the existing universal service mechanisms. As there will be no change until January 1, 1999 to the support non-rural incumbent LECs currently receive as high cost and LTS support, we conclude that it is not necessary at this time to determine the manner in which non-rural carriers should adjust their interstate access charges to reflect a difference in universal service support. We will address this issue prior to the January 1, 1999, effective date of the forward-looking cost mechanisms for non-rural carriers.

383. *Rural Carriers.* In our *Universal Service Order,* we conclude that rural carriers, as defined in section 153(37) of the Act, shall continue to receive support based on embedded costs for at least three years. Beginning on January 1, 1998, rural carriers shall receive high cost loop support, DEM weighting assistance, and LTS benefits on the basis of the modified support mechanisms.

384. In our *Universal Service Order,* we adopt modified per-line support mechanisms for providing support comparable to the LTS support received under the existing mechanisms. Beginning on January 1, 1998, we will allow a rural carrier's annual LTS support to increase from its support for the preceding calendar year based on the percentage of increase of the nationwide average loop cost. Rural, non-price cap LECs should continue to apply any revenues received from the modified universal service support mechanisms that replace current LTS amounts to the accounts to which they are currently applying LTS support.

385. We also decide in the *Universal Service Order* that, from January 1, 1998 through December 31, 1999, rural carriers shall calculate their high cost support using the current high cost formulas. We conclude that no adjustment to rural incumbent LECs' interstate access charges is necessary at this time because incumbent LECs will continue to use the existing high cost formulas to determine high cost support. As we determine in that order, however, beginning January 1, 2000, rural carriers shall receive high cost loop support for their average loop costs that exceed 115 percent of an inflation-adjusted nationwide average loop cost. The inflation adjusted nationwide average cost per loop shall be calculated by multiplying the 1997 nationwide average cost per loop by the percentage in change in Gross Domestic Product Chained Price Index (GDP–CPI) from 1997–1998. We conclude that rural, non-price cap LECs should continue to apply any revenues received from the modified universal service support mechanism that replace amounts received under the current high cost support system to the accounts to which they are currently applying high cost support.

386. Finally, in our *Universal Service Order,* we adopt the Joint Board's recommendation that a subsidy corresponding in amount to that generated formerly by DEM weighting be recovered from the new universal service support mechanisms. Beginning on January 1, 1998 and continuing until permanent mechanisms for them become effective, rural carriers will receive DEM weighting assistance calculated as follows: assistance will equal the difference between the 1996 weighted DEM factor and the unweighted DEM factor multiplied by the annual unseparated local switching revenue requirement. As with comparable LTS and high cost support, rural, non-price cap LECs should continue to apply any support received from the modified universal service support mechanisms that replaces existing DEM weighting amounts to the accounts to which they are currently applying DEM weighting assistance.

387. Currently, the high cost and DEM weighting support mechanisms shift a portion of the intrastate revenue

requirement to the interstate jurisdiction in order to permit LECs to recover a greater percentage of their costs from the interstate jurisdiction. Some non-price cap LECs are concerned that, to the extent that support from the modified universal service mechanisms is not applied to the intrastate jurisdiction, an intrastate revenue shortfall will occur. In the *Universal Service Order,* we conclude that, until universal service support is based on forward-looking economic cost, carriers should continue to receive amounts from the new universal service mechanisms comparable to existing high cost and DEM weighting support. In that order, we do not alter the existing revenue-shifting mechanisms in place for the current high cost support and DEM weighting at this time. Thus, no intrastate revenue shortfall will occur, because no revenue requirement is being shifted back to the intrastate jurisdiction.

E. Part 69 Allocation Rules

1. Background

388. In the NPRM, we solicited comment on whether it would be appropriate for incumbent price cap LECs to be relieved of complying with subparts D and E of part 69 of our rules, which address the allocation of investments and expenses to the access rate elements.

2. Discussion

389. We conclude that at this time we should maintain our part 69 cost allocation rules. In this Report and Order, we have instituted a phasing out of the CCL charge. Until the per-minute CCL charge is phased out completely and multi-line PICCs do not recover any common line revenues, price cap LECs will need to use these rules to calculate the SLC. Therefore, we decline to eliminate the cost allocation rules at this time. We note that we may revisit this issue when these rules are no longer needed to calculate the SLC.

F. Other Proposed Part 69 Changes

1. Background

390. In the NPRM, we sought comment on revisions necessary to update part 69 and conform it to the 1996 Act. In the NPRM, we made several proposals that we thought necessary to bring Part 69 current, including: eliminating the rules that provide for a ''contribution charge'' that may be assessed on special access and expanded interconnection; removing the rule and sections referencing the rule that establishes the equal access rate element; and removing the rule and sections referencing the rule that establishes a rate element for costs associated with lines terminating at ''limited pay telephones''; and changing the definition of ''Telephone Company'' to mean incumbent LEC. We also sought comment on whether rate elements and subelements established pursuant to waiver should be incorporated into Part 69.

2. Discussion

391. The passage of the 1996 Act and the subsequent enactment of implementing regulations requires that we update and revise various sections of Part 69. Sections 69.4(f) and 69.122 of our rules provide for a ''contribution charge'' that may be assessed on special access and expanded interconnection. These sections are inconsistent with section 254 as amended by the 1996 Act, which requires, inter alia, that such carrier contributions be equitable and nondiscriminatory. Furthermore, our rules governing the contribution charge merely allow a LEC to try to justify this charge in the expanded interconnection context. No party has even attempted to justify such a charge in more than four years. Given this and the relevant amendments in the 1996 Act, we find that there is no need for this rate element. We conclude that §§ 69.4(f) and 69.122 of our rules, which provide for a ''contribution charge'' that may be assessed on special access and expanded interconnection, should be deleted.

392. Under § 69.4(d), we required carriers to eliminate any separate equal access charge by January 1, 1994. We conclude, therefore, that § 69.4(d), which established the equal access rate element for a limited duration, should be deleted because of the expiration of the designated time period. Similarly, we conclude that § 69.107, which governs the computation of the equal access rate element charges, and §§ 69.308 and 69.410, which concern allocation of costs to that rate element, should be deleted because the designated time period for separate equal access rate elements has expired. We conclude that references to these deleted sections should also be removed from part 69. Section 69.309 refers to § 69.308 and § 69.411 refers to § 69.410. To ensure consistency, a new section, designated as § 69.3(3)(12), should be added and should read as follows: ''Such a tariff shall not contain any separate carrier's carrier tariff charges for an Equal Access element.'' Similarly, we conclude that § 69.205, which concerns transitional premium charges for IXCs and others should be deleted because the designated transition period for these charges has expired.

393. Section 69.103 requires incumbent LECs to establish a separate rate element for costs associated with lines terminating at ''limited pay telephones.'' We note that few, if any, payphone service providers offer this type of service today. Sections 69.303(a), 69.304(c), 69.307(c), and 69.406(a)(9) concern the allocation of costs to this rate element. Section 276 of the Act and the implementing regulations require a new per call compensation plan, which requires, inter alia, that incumbent LECs remove all payphone costs from access charges. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, CC Docket No. 96–128, FCC 96–388, 61 FR 39397 (July 29, 1996) (*Payphone Order*), *recon.*, FCC 96–439, 61 FR 65341 (December 12, 1996) (*Payphone Reconsideration Order*), *appeal docketed sub nom., Illinois Public Telecommunications Ass'n* v. *FCC and United States,* Case No. 96–1394 (D.C. Cir., filed October 17, 1996). This new compensation plan, as well as the payphone dialing parity requirements, have eliminated the need for §§ 69.103, 69.303(a), 69.304(c), 69.307(c), and 69.406(a)(9). We conclude that these sections should be deleted.

394. We conclude that codifying previously-granted Part 69 waivers is not necessary at this time. Under the *Price Cap Performance Review Third Report and Order,* a party seeking to introduce a new service may do so by filing a petition showing that the new service is in the public interest. Once that petition for a new service has been granted, carriers seeking to introduce the same service with the same rate structure may do so under expedited procedures. This streamlined alternative for introducing new services should resolve past difficulties encountered with the Part 69 waiver process. The proposed codification of previously-granted waivers is thus unnecessary. We therefore decline to codify previously-granted Part 69 waivers into our rules.

395. NECA and TCA have requested that the Commission extend to all rate-of-return companies, the right to offer new services based on an expedited process, which requires, inter alia, a showing that the new service is in the public interest. In the Third Report and Order, we granted to incumbent price cap LECs the right to introduce new services under a streamlined procedure. We will address the request of NECA and TCA when we take up access

reform for rate-of-return companies in the near future.

396. In the NPRM, we solicited comment on whether we should adopt regulatory requirements to govern rates for terminating access offered by competitive LECs. In Section VI.C., supra, we conclude that we will not adopt such regulatory requirement at this time. For the same reasons, we find it unnecessary to apply any of our Part 69 regulations to competitive LECs. We therefore conclude that § 69.2(hh), which currently defines ''Telephone Company'' by reference to Section 3(r) of the 1934 Act, should be changed to read as follows: '' 'Telephone Company' or 'local exchange carrier' as used in this Part means an incumbent local exchange carrier as defined in section 251(h)(1) of the 1934 Act as amended by the 1996 Act.'' There is no indication in the record that competitive LECs have exercised any degree of market power in provision of terminating access or other access services. By definition, non-dominant carriers do not exercise market power. Further, non-dominant carriers possess a negligible share of the current access market and they will be competing with incumbent LECs whose rates are subject to regulation. As a practical matter, the rates of the incumbent LECs will serve as a constraint to some degree on the pricing and practices of non-dominant LECs. We therefore find on this record that it is sufficient to rely on the Section 208 complaint process to assure compliance with the Act by competitive LECs, and that we should not apply Part 69 to them. To the extent that our definitions or our application of Part 69 needs in the future to be expanded to encompass LECs other than incumbent LECs, we can revisit this issue.

VIII. Final Regulatory Flexibility Analysis

397. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM in this proceeding. The Commission sought written public comments on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order (the First Report and Order in this Access Charge Reform proceeding) conforms to the RFA, as amended. We provide this summary analysis to provide context for our analysis in this FRFA. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

A. Need for and Objectives of This First Report and Order

398. The Telecommunications Act of 1996 requires incumbent LECs to offer interconnection and unbundled elements on an unbundled basis, and imposes a duty to establish reciprocal compensation arrangements for the transport and termination of calls. The Commission's access charge rules were adopted at a time when interstate access and local exchange services were offered on a monopoly basis, and in many cases are inconsistent with the competitive market envisioned by the 1996 Act. This proceeding is being conducted to revise the Commission's access charge rules to make them consistent with the Telecommunications Act of 1996.

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

399. Only one party, Rural Tel. Coalition, commented on the IRFA contained in the NPRM. Rural Tel. Coalition disagrees with our conclusion that rules applying only to price cap LECs will not affect non-price cap LECs in a way that requires analysis under the RFA. According to Rural Tel. Coalition, the decisions made in this Order will ''prejudge and prejudice'' a later rulemaking addressing access charge reform for non-price cap LECs. In addition, Rural Tel. Coalition argues that non-price cap LECs, which include small incumbent LECs, will be injured if the access reform issues addressed in this Order are not implemented for them as well as price-cap LECs. Finally, Rural Tel. Coalition argues that the Commission impermissibly determined that small incumbent LECs are not small businesses within the meaning of the RFA.

400. Rather than attempt to enact ''one size fits all'' access charge reform that would risk not fully accounting for the special circumstances of rate-of-return and other non-price cap LECs, we have chosen to address those LECs separately in a proceeding in which we may better focus on their needs. We do not agree with Rural Tel. Coalition that our decisions in this Order will ''prejudge and prejudice'' our consideration of the issues in a subsequent rulemaking. Although we may often find that the public interest concerns are similar for large and small carriers, our analysis will begin anew, and will address all relevant factors. Moreover, where the special circumstances faced by small incumbent LECs justify different treatment than is accorded price cap LECs in this Order, we will be better able to explain and address those concerns in a separate proceeding. For the reasons set forth in Section V above, we also disagree with Rural Tel. Coalition that small incumbent LECs may be injured by the delay involved in conducting separate rulemakings. Finally, although we are not persuaded on the basis of this record that our prior practice of finding incumbent LECs not subject to regulatory flexibility analysis (because they are not small businesses) has been incorrect, we have fully performed an RFA analysis for small incumbent LECs in this Order, including consideration of any adverse impact of the rules we adopt and consideration of alternatives that may reduce adverse impacts on such entities.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

401. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities. 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).

402. Pursuant to 5 U.S.C. sec. 601(3), 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**.'' SBA has developed a definition of small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone). We first discuss the number of small businesses falling within this category, and then we attempt to refine further our estimate to correspond with the categories of telephone companies that are commonly used under our rules.

403. Consistent with our prior practice, our use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent

LECs.'' We use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.'' Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, they are, consistent with our prior practice, excluded from the definition of ''small entity'' and ''small business concerns.'' Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by the SBA as ''small business concerns.''

1. Telephone Companies, Except Radiotelephone Companies (SIC 4813)

404. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (''the 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. 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 incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent local exchange carriers.

405. According to the *Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet),* there are 2,847 interstate carriers. 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.

406. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. 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. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. 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 nonradiotelephone companies that might qualify as small entities or small incumbent LECs. We do not have information on the number of 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 there are fewer than 2,295 small telephone communications companies other than radiotelephone companies.

407. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small incumbent providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide is the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. We do not have information on the number of carriers that are not independently owned and operated, nor what carriers have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs.

2. Information Service Providers and Competitive LECs Are Not Affected

408. In Section VIII.B of the NPRM, we sought comment on whether to continue to exempt enhanced service providers (which we now refer to as information service providers, or ISPs) from any requirement to pay access charges. Because we decide to retain the ISP exemption, and do not permit LECs to impose access charges on ISPs at this time, we conclude that the RFA does not require us to consider the effects of any proposed rules on ISPs that fall within the definition of a small entity. Instead, as set forth in Section VI.B above, we find that the proceeding commenced with the Notice of Inquiry issued contemporaneously with the NPRM is the appropriate forum to address the fundamental questions about ISP usage of the public switched network. In the Notice of Inquiry, we sought comment on broader issues concerning the development of information services and Internet access. The information provided will give us the data we need to make further reasonable and informed decisions regarding Internet access and other information services, and, if necessary, to craft proposals for a subsequent Notice of Proposed Rulemaking that are sensitive to the complex economic, technical, and legal questions raised in this area. Similarly, we sought comment in Section VIII.A of the NPRM on whether the public interest would be served by regulating interstate terminating access services offered by competitive (non-incumbent) LECs. Because we conclude that the public interest would not be served by imposing any regulations on competitive LECs' interstate terminating access offerings at this time, we conclude that the RFA does not require us to consider the effects of any proposed rules on competitive LECs that fall within the definition of a small entity.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

409. In Section V.A above, we adopt changes to transport interconnection charge (TIC) rate structures and transport rate structures to comply with the court order in *CompTel* v. *FCC.* These changes will affect all incumbent LECs, including small incumbent LECs, and will require small incumbent LECs to make one or more tariff filings reflecting the new rate structures, which will involve the use of legal skills, and possibly accounting, economic, and financial skills.

410. As set forth in Section VI.D above, incumbent LECs, including small incumbent LECs, must reduce their interstate access charges to reflect the elimination of those former universal service obligations that are being replaced with new universal service obligations, increase their interstate access charges to reflect their new universal service obligations, and, to the

extent necessary, adjust their interstate access charges to account for any additional universal service funds received under the modified universal service mechanisms. This will require small incumbent LECs to make one or more tariff filings, which will involve the use of legal skills.

E. Burdens on Small Entities, and Significant Alternatives Considered and Rejected

411. *Sections III.C–D: Transport/TIC Rate Structure Changes.* As set forth in Sections III.C–D above, we adopt a new tandem-switched transport rate structure and rate levels that replace the interim rate structure in place prior to today. In addition, we adjust the TIC to reflect the changes made by the new tandem-switched transport rate structure and rate levels. Unlike before, we adopt for the first time a final, cost-based rate structure, which should reduce and minimize uncertainty for those small businesses and small incumbent LECs whose businesses involve these services. Moreover, the new rate structure and rate levels are more closely related to the costs of providing the underlying services, which should minimize the economic impact of these rules on small businesses and small incumbent LECs by minimizing the adverse impacts that can accompany non-cost based regulation.

412. We also adopt a transition plan that will have the effect of giving small businesses and small incumbent LECs the opportunity to plan, adjust, and develop their networks with a minimum of disruption for them and their customers. Finally, as set forth in Section III.C–D above, we find that the reallocation of TIC costs and the new recovery procedures will facilitate the development of competitive markets. This is because incumbent LEC rates will move toward cost-based levels and incumbent LECs will no longer have the ability to assess TICs on switched access minutes that do not use their transport facilities. These pricing revisions may create new opportunities for small entities, including small business and small incumbent LECs wishing to enter local telecommunications markets.

413. *Section V: Access Reform for Incumbent Rate-of-Return Local Exchange Carriers.* Our decision to limit access charge reform, with certain specified exceptions, to price cap LECs, which do not include small businesses or small incumbent LECs, should mitigate the potential that access charge reform could have a significant economic impact on any small incumbent LECs. This is because the Commission will address in a separate proceeding the common set of complex issues faced by non-price cap LECs, which are different than those faced by price cap LECs. Moreover, as discussed above in Section V, we find that small incumbent LECs are unlikely to face imminent harm as a result of the continued application of our current access charge rules because all non-price cap incumbent LECs may be exempt from, or eligible for a modification or suspension of, the interconnection and unbundling requirements of the 1996 Act.

414. *Section VI.A: Applicability of Part 69 to Unbundled Elements.* As a result of the exclusion of unbundled elements from Part 69 access charges, described in Section VI.A above, incumbent LECs, including small incumbent LECs, may receive reduced overall levels of interstate access charges as competitors enter local markets using unbundled network elements. They will, however, receive payment for those unbundled network elements pursuant to interconnection agreements under Section 251 of the Act. Moreover, to the extent that small incumbent LECs receive universal service support through interstate access charges, such funding will continue to be received without regard to any loss of revenue from interstate access charges. This is because all universal service support received by small incumbent LECs will be received from the new Universal Service Fund, established in a separate order released today. Finally, we note that section 251 of the Act contains provisions expressly designed to take into account the special circumstances of small incumbent LECs, including those that qualify as rural LECs, with respect to interconnection obligations.

415. Our decisions in Section VI.A above to exclude unbundled elements from the application of Part 69 access charges is likely to facilitate the development of competitive markets. This is because prices for unbundled elements will reflect the costs of those elements, and will not impose on competitors additional charges unrelated to the costs of elements being purchased. Accordingly, as set forth in Section VI.A above, competitors using unbundled elements will contribute to universal service on an equitable and non discriminatory basis instead of paying implicit subsidies to incumbent LECs (whether in addition to, or in place of, explicit universal service mechanisms). These decisions may create new opportunities for small entities, including small businesses and small incumbent LECs, wishing to enter local telecommunications markets.

416. *Section VI.C: Terminating Access Services Offered by Non-Incumbent LECs.* As set forth in Section VI.C above, we find that treating new entrants as dominant carriers subject to regulation of their terminating access services until we find otherwise would impose unnecessary regulation, including potentially increased regulatory burdens on small businesses. Instead of imposing such burdens, we find that the imposition of regulatory requirements with respect to competitive LEC terminating access is unnecessary in the absence of some stronger record evidence that competitive LECs have in the past charged unreasonable terminating access rates, or are likely to do so in the future. If there is sufficient indication that competitive LECs are imposing unreasonable terminating access charges, we will revisit this issue.

417. *Section VI.D: Universal Service Related Part 69 Changes.* As set forth in Section VI.D.2.a above, we require that LECs that contribute to the Long Term Support (LTS) program and LECs that receive LTS payments revise their tariffs to reflect the fact that the LTS program is being replaced with explicit support from the new Universal Service Fund implemented pursuant to the *Universal Service Order* adopted today. This will require small incumbent LECs to make one or more tariff filings. The new Universal Service Fund will facilitate the transition to competitive markets while maintaining specific, predictable and sufficient support for universal service as required under section 254 of the Act. Accordingly, the required changes in LECs' tariff filings, including those in tariffs filed by small incumbent LECs, are part of an overall mechanism designed to minimize the economic impact of the 1996 Act on small businesses and small incumbent LECs. The other universal service related changes that we adopt in this Order affect only price-cap LECs, which do not include any small businesses or small incumbent LECs.

F. Report to Congress

418. The Commission shall include a copy of this FRFA, along with this Order, in a report to be sent to Congress pursuant to SBREFA.

X. Ordering Clauses

419. Accordingly, *it is ordered,* pursuant to Sections 1–4, 10, 201–205, 251, 254, 303(r), and 410(a) of the Communications Act of 1934, as amended, and Section 601 of the Telecommunications Act of 1996, 47 U.S.C. secs. 151–154, 160, 201–205, 251,

254, 303(r), 410(a), and 601, that the *order is adopted*.

420. *It is further ordered* that the provisions in this Order will be effective June 15, 1997. We anticipate this date will be at least thirty days after publication of the rules in the **Federal Register**. If publication of this Order is delayed, however, we find good cause under 5 U.S.C. sec. 553(d)(3) to make this Order effective less than thirty days after publication, because the local exchange carriers subject to price cap regulation must file tariffs by June 16, in order for them to be effective on July 1, 1997, as required by Section 69.3 of the Commission's rules, 47 CFR § 69.3. In addition, to ensure that the local exchange carriers subject to price cap regulation have actual notice of this Order immediately following its release, we are serving those entities by certified first class mail. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

421. *It is further ordered* that the following rules or amendments thereto, which impose new or modified information or collection requirements, shall become effective upon approval by the Office of Management and Budget (OMB), but no sooner than June 15, 1997: 47 CFR §§ 61.45, 61.47, 69.104, 69.126, 69.151, and 69.152. The following rules, or amendments thereto, in this Report and Order shall be effective January 1, 1998: 47 CFR §§ 61.3, 61.46, 69.1, 69.2, 69.105, 69.123, 69.124, 69.125, 69.154, 69.155, 69.157, 69.305, 69.306, 69.309, 69.401, 69.411, and 69.502. The following rules, which impose new or modified information or collection requirements, shall become effective upon approval by the Office of Management and Budget (OMB), but no sooner than January 1, 1998: 47 CFR §§ 61.42, 61.48, 69.4, 69.106, 69.111, 69.153, 69.156. Unless otherwise stated herein, all remaining provisions of this Order are effective June 15, 1997.

422. *It is further ordered* that the waiver petitions of Bell Atlantic, Pacific Bell, GTE, Cincinnati Bell, U S West, and BellSouth discussed in Section III.A.5., regarding Section 69.104 as applied to ISDN service *are dismissed*.

423. *It is further ordered* that the rulemaking proceeding in CC Docket No. 95–72 *is terminated*.

424. *It is further ordered*, pursuant to Sections 1–4, 10, 201–205, 251, 254, 303(r), and 701 of the Communications Act of 1934, as amended, 47 U.S.C. secs. 151–154, 160, 201–205, 251, 254, 303(r), and 601, that *notice is hereby given* of the rulemaking described above and that *comment is sought* on these issues.

List of Subjects

47 CFR Part 61

Communications common carriers, Tariffs.

47 CFR Part 69

Access charges, Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 61 and 69 of title 47 of the Code of Federal Regulations are amended as follows:

PART 61—TARIFFS

1. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

2. Section 61.3 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 61.3 Definitions

* * * * *

(f) *Basket*. Any class or category of tariffed service or charge:

* * * * *

3. Section 61.42 is amended by revising paragraphs (d)(1), (d)(2), and (d)(3), adding paragraph (d)(6), and revising paragraphs (e)(1) and (e)(2)(vi) to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) * * *

(1) A basket for the common line interstate access elements as described in §§ 69.115, 69.152, 69.154, and 69.157 of this chapter, and that portion of the interstate access element described in § 69.153 of this chapter that recovers common line interstate access revenues;

(2) A basket for traffic sensitive switched interstate access elements;

(3) A basket for trunking services as described in §§ 69.110, 69.111, 69.112, 69.114, 69.125(b), and 69.155 of this chapter, and that portion of the interstate access element described in § 69.153 of this chapter that recovers residual interconnection charge revenues;

* * * * *

(6) A basket for the marketing expenses described in § 69.156 of this chapter, including those recovered through End User Common Line charges and Presubscribed Interexchange Carrier charges.

(e)(1) The traffic sensitive switched interstate access basket shall contain such services as the Commission shall permit or require, including the following service categories:

(i) Local switching as described in § 69.106(f) of this chapter;

(ii) Information, as described in § 69.109 of this chapter;

(iii) Data base access services;

(iv) Billing name and address, as described in § 69.128 of this chapter;

(v) Local switching trunk ports, as described in § 69.106(f)(1) of this chapter; and

(vi) Signalling transfer point port termination, as described in § 69.125(c) of this chapter.

(2) * * *

(vi) Interconnection charge, as recovered in §§ 69.153 and 69.155 of this chapter.

* * * * *

4. Section 61.45 is amended by revising the introductory text of paragraph (b) and (b)(1), redesignating the introductory text of paragraph (c) as the introductory text of paragraph (c)(1) and revising it, and adding new paragraphs (c)(2), (d)(1)(ix), (i), (j), (k), and (l) to read as follows:

§ 61.45 Adjustments to the PCI for local exchange carriers.

* * * * *

(b) Adjustments to local exchange carrier PCIs for the baskets designated in § 61.42(d) (2), (3), (4), (5), and (6) shall be made pursuant to the formula set forth in § 61.44(b), and as further explained in §§ 61.44 (e), (f), (g), and (h).

(1) Notwithstanding the value of X defined in § 61.44(b), the X value applicable to the baskets specified in § 61.42(d) (2), (3), and (6) shall be 4.0%, or 4.7%, or 5.3%, as the carrier elects.

* * * * *

(c)(1) Subject to paragraphs (c)(2) and (e) of this section, adjustments to local exchange carrier PCIs for the basket designated in § 61.42(d)(1) shall be made pursuant to the following formula:

* * * * *

(2) The formula set forth in paragraph (c)(1) of this section shall be used by a local exchange carrier subject to price cap regulation only if that carrier is imposing a carrier common line charge pursuant to § 69.154 of this chapter. Otherwise, adjustments to local exchange carrier PCIs for the basket designated in § 61.42(d)(1) shall be made pursuant to the formula set forth in § 61.44(b), and paragraphs (i) and (j) of this section, and as further explained in § 61.44 (e), (f), (g), and (h). For the purposes of this paragraph, and notwithstanding the value of X defined

in § 61.44(b), the X value applicable to the basket specified in § 61.42(d)(1) shall be 4.0%, or 4.7%, or 5.3%, as the carrier elects.

(d) * * *

(1) * * *

(ix) The completion of amortization of equal access expenses.

* * * * *

(i)(1) Notwithstanding the provisions of paragraphs (b) and (c) of this section, and subject to the limitations of paragraph (j) of this section, price cap local exchange carriers that are recovering interconnection charge revenues through per-minute rates pursuant to § 69.124 or § 69.155 of this chapter shall target, to the extent necessary to eliminate the recovery of any residual interconnection charge revenues through per-minute rates, any PCI reductions associated with the baskets designated in § 61.42(d) (1) and (2) that result from the application of the formula in § 61.44(b), as further explained in § 61.44 (e), (f), (g), and (h), to the PCI for the basket designated in § 61.42(d)(3), with no adjustment being made to the PCIs for the baskets designated in § 61.42(d) (1) and (2) as a result of the application of the formula in § 61.44(b). These reductions are to be made after the adjustment is made to the PCI for the basket designated in § 61.42(d)(3) resulting from the application of the formula in § 61.44(b), as further explained in § 61.44 (e), (f), (g), and (h).

(2) Notwithstanding the provisions of paragraphs (b) and (c) of this section, and subject to the limitations of paragraph (j) of this section, price cap local exchange carriers that are recovering interconnection charge revenues through per-minute rates pursuant to § 69.155 of this chapter shall target, to the extent necessary to eliminate the recovery of any residual interconnection charge revenues through per-minute rates, any PCI reductions associated with the basket designated in § 61.42(d)(6) that result from the application of the formula in § 61.44(b), as further explained in § 61.44 (e), (f), (g), and (h), to the PCI for the basket designated in § 61.42(d)(3), with no adjustment being made to the PCIs for the basket designated in § 61.42(d)(6) as a result of the application of the formula in § 61.44(b). This reduction is to be made after any adjustment made pursuant to paragraph (i)(1) of this section.

(3) Through December 31, 1997, the reduction in the PCI for the basket designated in § 61.42(d)(3) that results from paragraph (i)(1) of this section shall be determined by dividing the sum of the dollar effects of the PCI reductions that would have applied to the baskets designated in § 61.42(d)(1) and (d)(2) except for the provisions of paragraph (i)(1) of this section by the dollar amount associated with the PCI for the basket designated in § 61.42(d)(3), and multiplying the PCI for the basket designated in § 61.42(d)(3) by one minus the resulting ratio.

(4) Effective January 1, 1998, the reduction in the PCI for the basket designated in § 61.42(d)(3) that results from paragraphs (i)(1) and (i)(2) of this section shall be determined by dividing the sum of the dollar effects of the PCI reductions that would have applied to the baskets designated in § 61.42(d)(1), (d)(2), and (d)(6), except for the provisions of paragraphs (i)(1) and (i)(2) of this section, by the dollar amount associated with the PCI for the basket designated in § 61.42(d)(3), and multiplying the PCI for the basket designated in § 61.42(d)(3) by one minus the resulting ratio.

(j) In determining the extent of the targeting that shall occur pursuant to paragraphs (i)(1) and (i)(2) of this section, local exchange carriers shall compute their anticipated residual interconnection charge amount by excluding revenues that are expected to be reallocated to cost-causative facilities-based charges in the future. To determine interconnection charge amounts so excluded in connection with the July 1, 1997 tariff filings, the following local exchange carriers shall use as an estimate of the residual interconnection charge revenues the specified residual interconnection charge percentage: NYNEX, 77.63 percent; BellSouth, 56.93 percent; U S West, 59.14 percent; Bell Atlantic, 63.96 percent; Southwestern Bell Telephone, 69.11 percent; and Pacific Bell and Nevada Bell, 53.52 percent. Each remaining price cap local exchange carrier shall estimate a residual interconnection charge in an amount equal to 55 percent of its current interconnection charge revenues. For subsequent tariff filings in which the PCI reductions are to be targeted to the interconnection charge, these initial estimates shall be adjusted to reflect the actual amounts that have or will be reallocated. If the use of these estimates results in more PCI reductions being targeted to the interconnection charge than required to eliminate the per-minute interconnection charge, the local exchange carrier shall make the necessary exogenous adjustments to reverse the effects of the excess targeting.

(k) The calculation of the PCI for the basket designated in § 61.42(d)(3) shall include any residual interconnection charge revenues recovered pursuant to §§ 69.153 and 69.155 of this chapter.

(l) The calculation of the PCI for the basket designated in § 61.42(d)(6) shall include any marketing expense revenues recovered pursuant to §§ 69.153 and 69.156 of this chapter.

5. Section 61.46 is amended by revising paragraphs (d) and (e) and adding new paragraphs (g) and (h) to read as follows:

§ 61.46 Adjustments to the API.

* * * * *

(d)(1) Subject to paragraph (d)(2) of this section, and in connection with any price cap tariff proposing changes to rates for services in the basket designated in § 61.42(d)(1), the maximum allowable carrier common line (CCL) charges shall be computed pursuant to the following methodology:

$CCL_{MOU}=CL_{MOU} * (1+\%\text{ change in CL PCI}) - (EUCL_{MOU}+PICC_{MOU})*1/(1+(g/2))$

Where:

CCL_{MOU}=the sum of each of the proposed Carrier Common Line rates multiplied by its corresponding base period Carrier Common Line minutes of use, divided by the sum of all types of base period Carrier Common Line minutes of use,

CL_{MOU}=the sum of each of the existing maximum allowable Carrier Common Line rates multiplied by its corresponding base period Carrier Common Line minutes of use, plus each existing maximum allowable End User Common Line (EUCL) rate multiplied by its corresponding base period lines, plus the common line portion of each existing maximum allowable Presubscribed Interexchange Carrier Charge (PICC) multiplied by its corresponding base period lines, divided by the sum of all types of base period Carrier Common Line minutes of use,

$EUCL_{MOU}$=maximum allowable End User Common Line rates multiplied by base period lines, and divided by the sum of all types of base period Carrier Common Line minutes of use,

$PICC_{MOU}$=the common line portion of maximum allowable Presubscribed Interexchange Carrier charge rates multiplied by base period lines, and divided by the sum of all types of base period Carrier Common Line minutes of use, and

g=the ratio of minutes of use per access line during the base period to minutes of use per access line

during the previous base period, minus 1.

(2) The formula set forth in paragraph (d)(1) of this section shall be used by a local exchange carrier subject to price cap regulation only if that carrier is imposing a per-minute carrier common line charge pursuant to § 69.154 of this chapter. Otherwise, adjustments to local exchange carrier APIs for the basket designated in § 61.42(d)(1) shall be made pursuant to the formula set forth in paragraph (a) of this section.

(e)(1) In addition, for the purposes of paragraph (d) of this section, ''Existing Carrier Common Line Rates'' shall include existing originating premium, originating non-premium, terminating premium and terminating non-premium rates; and ''End User Common Line Rates'' used to calculate the CL_{MOU} and the $EUCL_{MOU}$ factors shall include, but not be limited to, Residential and Single Line Business rates, Centrex rates, and the Special Access surcharge.

(2) For purposes of paragraph (d) of this section, ''each existing Presubscribed Interexchange Carrier Charge'' shall include all the charges specified in § 69.153 of this chapter.

* * * * *

(g) The calculation of the API for the basket designated in § 61.42(d)(3) shall include any residual interconnection charge revenues recovered pursuant to §§ 69.153 and 69.155 of this chapter.

(h) The calculation of the API for the basket designated in § 61.42(d)(6) shall include any marketing expense revenues recovered pursuant to §§ 69.153 and 69.156 of this chapter.

6. Section 61.47 is amended by adding paragraphs (g)(7), (i) and (j) to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

(g)(1) * * *

(7) The initial level of the local switch trunk ports service category designated in § 61.42(e)(1)(v) shall be established to include those costs identified pursuant to § 69.106(f)(1) of this chapter. This level shall be assigned a value of 100, and thereafter must be adjusted as provided in paragraph (a) of this section, subject to the banding restrictions of paragraph (e) of this section.

* * * * *

(i)(1) Through December 31, 1997, notwithstanding the requirements of paragraph (a) of this section, if a local exchange carrier is recovering interconnection charge revenues through per-minute rates pursuant to § 69.124 or § 69.155 of this chapter, any reductions to the PCI for the basket designated in § 61.42(d)(3) resulting from the application of the provisions of § 61.45 (b) and (i)(1) shall be directed to the SBI of the service category designated in § 61.42(e)(2)(vi).

(2) Effective January 1, 1998, notwithstanding the requirements of paragraph (a) of this section, if a local exchange carrier is recovering interconnection charge revenues through per-minute rates pursuant to § 69.155 of this chapter, any reductions to the PCI for the basket designated in § 61.42(d)(3) resulting from the application of the provisions of § 61.45(b), (i)(1), and (i)(2) shall be directed to the SBI of the service category designated in § 61.42(e)(2)(vi).

(3) Through December 31, 1997, the SBI reduction required by paragraph (i)(1) of this section shall be determined by dividing the sum of the dollar amount of any PCI reduction required by § 61.45(i)(1) and from the application of § 61.45(b) to the basket described in § 61.42(d)(3) by the dollar amount associated with the SBI for the service category designated in § 61.42(e)(2)(vi), and multiplying the SBI for the service category designated in § 61.42(e)(2)(vi) by one minus the resulting ratio.

(4) Effective January 1, 1998, the SBI reduction required by paragraph (i)(2) of this section shall be determined by dividing the sum of the dollar amount of any PCI reduction required by § 61.45 (i)(1) and (i)(2), and from the application of § 61.45(b) to the basket described in § 61.42(d)(3) by the dollar amount associated with the SBI for the service category designated in § 61.42(e)(2)(vi), and multiplying the SBI for the service category designated in § 61.42(e)(2)(vi) by one minus the resulting ratio.

(j) The calculation of the SBI for the service category designated in § 61.42(e)(2)(vi) shall include any residual interconnection charge revenues recovered pursuant to §§ 69.153 and 69.155 of this chapter.

7. Section 61.48 is amended by adding paragraph (k) to read as follows:

§ 61.48 Transition rules for price cap formula calculations.

* * * * *

(k) *Marketing expenses.* In the January 1, 1998 price cap tariff filing, local exchange carriers shall establish the marketing expense basket designated in § 61.42(d)(6) with an initial PCI and API level of 100. The initial value of 100 for the PCI and API for marketing expenses shall correspond to the marketing expenses described in § 69.156(a) of this chapter.

PART 69—ACCESS CHARGES

8. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154 (i) and (j), 201, 202, 203, 205, 218, 254, and 403.

9. Section 69.1(c) is revised to read as follows:

§ 69.1 Application of access charges.

* * * * *

(c) The following provisions of this part shall apply to telephone companies subject to price cap regulation only to the extent that application of such provisions is necessary to develop the nationwide average carrier common line charge, for purposes of reporting pursuant to §§ 43.21 and 43.22 of this chapter, and for computing initial charges for new rate elements: §§ 69.3(f), 69.106(b), 69.106(f), 69.106(g), 69.109(b), 69.110(d), 69.111(c), 69.111(g)(1), 69.111(l), 69.112(d), 69.114(b), 69.114(d), 69.125(b)(2), 69.301 through 69.310, and 69.401 through 69.412. The computation of rates pursuant to these provisions by telephone companies subject to price cap regulation shall be governed by the price cap rules set forth in part 61 of this chapter and other applicable Commission Rules and orders.

10. Section 69.2 is amended by revising paragraph (hh) to read as follows:

§ 69.2 Definitions.

* * * * *

(hh) ''Telephone company'' or ''local exchange carrier'' as used in this part means an incumbent local exchange carrier as defined in section 251(h)(1) of the 1934 Act as amended by the 1996 Act.

* * * * *

11. Section 69.4 is amended by removing and reserving paragraphs (b)(1), (d) and (f), revising the introductory text of paragraph (b), and adding paragraph (h) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(b) Except as provided in paragraphs (c), (e), and (h) of this section, and in § 69.118, the carrier's carrier charges for access service filed with this Commission shall include charges for each of the following elements:

* * * * *

(h) In addition to the charges specified in paragraph (b) of this section, the carrier's carrier charges for access service filed with this Commission by price cap local exchange carriers shall include charges for each of the following elements:

(1) Presubscribed interexchange carrier;
(2) Per-minute residual interconnection;
(3) Dedicated local switching trunk port;
(4) Shared local switching trunk port;
(5) Dedicated tandem switching trunk port;
(6) Line port costs in excess of basic, analog service; and
(7) Multiplexers associated with tandem switching.

§ 69.103 [Removed]

12. Section 69.103 is removed.

13. Section 69.104 is amended by revising the section heading and paragraphs (a) and (e) to read as follows:

§ 69.104 End user common line for non-price cap incumbent local exchange carriers.

(a) This section is applicable only to incumbent local exchange carriers that are not subject to price cap regulation as that term is defined in § 61.3(x) of this chapter. A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service or Centrex service to the extent they do not pay carrier common line charges. A charge that is expressed in dollars and cents per line per month shall be assessed upon providers of public telephones. Such charge shall be assessed for each line between the premises of an end user, or public telephone location, and a Class 5 office that is or may be used for local exchange service transmissions.

* * * * *

(e) The monthly charge for each residential and single line business local exchange service subscriber shall be the charge computed in accordance with paragraph (c) of this section, or $3.50, whichever is lower.

* * * * *

14. Section 69.105 is amended by revising the section heading and paragraph (a), and removing paragraphs (b)(7) and (b)(8), to read as follows:

§ 69.105 Carrier common line for non-price cap local exchange carriers.

(a) This section is applicable only to local exchange carriers that are not subject to price cap regulation as that term is defined in § 61.3(x) of this chapter. A charge that is expressed in dollars and cents per line per access minute of use shall be assessed upon all interexchange carriers that use local exchange common line facilities for the provision of interstate or foreign telecommunications services, except that the charge shall not be assessed upon interexchange carriers to the extent they resell MTS or MTS-type services of other common carriers (OCCs).

* * * * *

15. Section 69.106 is amended by revising paragraphs (a) and (b), and by adding paragraphs (f) and (g) to read as follows:

§ 69.106 Local switching.

(a) Except as provided in § 69.118, charges that are expressed in dollars and cents per access minute of use shall be assessed by local exchange carriers that are not subject to price cap regulation upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign services.

(b) The per minute charge described in paragraph (a) of this section shall be computed by dividing the projected annual revenue requirement for the Local Switching element by the projected annual access minutes of use for all interstate or foreign services that use local exchange switching facilities.

* * * * *

(f) Except as provided in § 69.118, price cap local exchange carriers shall establish rate elements for local switching as follows:

(1) Price cap local exchange carriers shall separate from the projected annual revenues for the Local Switching element those costs projected to be incurred for ports (including cards and DS1/voice-grade multiplexers required to access end offices equipped with analog switches) on the trunk side of the local switch. Price cap local exchange carriers shall further identify costs incurred for dedicated trunk ports separately from costs incurred for shared trunk ports.

(i) Price cap local exchange carriers shall recover dedicated trunk port costs identified pursuant to paragraph (f)(1) of this section through flat-rated charges expressed in dollars and cents per trunk port and assessed upon the purchaser of the dedicated trunk terminating at the port.

(ii) Price cap local exchange carriers shall recover shared trunk port costs identified pursuant to paragraph (f)(1) of this section through charges assessed upon purchasers of shared transport. This charge shall be expressed in dollars and cents per access minute of use. The charge shall be computed by dividing the projected costs of the shared ports by the historical annual access minutes of use calculated for purposes of recovery of common transport costs in § 69.111(c).

(2) Price cap local exchange carriers shall recover the projected annual revenues for the Local Switching element that are not recovered in paragraph (f)(1) of this section through charges that are expressed in dollars and cents per access minute of use and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign services. The maximum charge shall be computed by dividing the projected remainder of the annual revenues for the Local Switching element by the historical annual access minutes of use for all interstate or foreign services that use local exchange switching facilities.

(g) On or after July 1, 1998, a price cap local exchange carrier may recover signalling costs associated with call setup through a call setup charge imposed upon all interstate interexchange carriers that use that local exchange carrier's facilities to originate or terminate interstate interexchange or foreign services. This charge must be expressed as dollars and cents per call attempt and may be assessed on originating calls handed off to the interexchange carrier's point of presence and on terminating calls received from an interexchange carrier's point of presence, whether or not that call is completed at the called location. Price cap local exchange carriers may not recover through this charge any costs recovered through other rate elements.

§ 69.107 [Removed]

16. Section 69.107 is removed.

17. Section 69.111 is amended by removing and reserving paragraphs (b) and (f), revising paragraphs (a), (c), (d), (e), and (g), and adding paragraph (l) to read as follows:

§ 69.111 Tandem-switched transport and tandem charge.

(a)(1) Through June 30, 1998, except as provided in paragraph (l) of this section, tandem-switched transport shall consist of two rate elements, a transmission charge and a tandem switching charge.

(2) Beginning July 1, 1998, except as provided in paragraph (l) of this section, tandem-switched transport shall consist of three rate elements as follows:

(i) A per-minute charge for transport of traffic over common transport facilities between the incumbent local exchange carrier's end office and the tandem switching office. This charge shall be expressed in dollars and cents per access minute of use and shall be assessed upon all purchasers of common transport facilities between the local exchange carrier's end office and the tandem switching office.

(ii) A per-minute tandem switching charge. This tandem switching charge shall be set in accordance with

paragraph (g) of this section, excluding multiplexer and dedicated port costs recovered in accordance with paragraph (l) of this section, and shall be assessed upon all interexchange carriers and other persons that use incumbent local exchange carrier tandem switching facilities.

(iii) A flat-rated charge for transport of traffic over dedicated transport facilities between the serving wire center and the tandem switching office. This charge shall be assessed as a charge for dedicated transport facilities provisioned between the serving wire center and the tandem switching office in accordance with § 69.112.

(b) [Reserved]

(c)(1) Through June 30, 1998, tandem-switched transport transmission charges generally shall be presumed reasonable if the telephone company bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, geographically averaged on a study-area-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable generally shall be suspended and investigated absent a substantial cause showing by the telephone company.

(2) Beginning July 1, 1998:

(i) Except in study areas where the incumbent local exchange carrier has implemented density pricing zones as described in section 69.124, per-minute common transport charges described in paragraph (a)(2)(i) of this section shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, geographically averaged on a study-area-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

(ii) In study areas where the incumbent local exchange carrier has implemented density pricing zones as described in § 69.124, per-minute common transport charges described in paragraph (a)(2)(i) of this section shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, averaged on a zone-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

(d)(1) Through June 30, 1998, the tandem-switched transport transmission charges may be distance-sensitive. Distance shall be measured as airline distance between the serving wire center and the end office, unless the customer has ordered tandem-switched transport between the tandem office and the end office, in which case distance shall be measured as airline distance between the tandem office and the end office.

(2) Beginning July 1, 1998, the per-minute charge for transport of traffic over common transport facilities described in paragraph (a)(2)(i) of this section may be distance-sensitive. Distance shall be measured as airline distance between the tandem switching office and the end office.

(e)(1) Through June 30, 1998, if the telephone company employs distance-sensitive rates:

(i) A distance-sensitive component shall be assessed for use of the transmission facilities, including intermediate transmission circuit equipment between the end points of the interoffice circuit; and

(ii) A non-distance-sensitive component shall be assessed for use of the circuit equipment at the ends of the interoffice transmission links.

(2) Beginning July 1, 1998, if the telephone company employs distance-sensitive rates for transport of traffic over common transport facilities, as described in paragraph (a)(2)(i) of this section:

(i) A distance-sensitive component shall be assessed for use of the common transport facilities, including intermediate transmission circuit equipment between the end office and tandem switching office; and

(ii) A non-distance-sensitive component shall be assessed for use of the circuit equipment at the ends of the interoffice transmission links.

(f) [Reserved]

(g)(1) The tandem switching charge imposed pursuant to paragraphs (a)(1) or (a)(2)(ii) of this section, as applicable, shall be set to recover twenty percent of the annual part 69 interstate tandem revenue requirement plus one third of the portion of the tandem switching revenue requirement being recovered through the interconnection charge recovered by §§ 69.124, 69.153, and 69.155, excluding multiplexer and dedicated port costs recovered in accordance with paragraph (l) of this section.

(2) Beginning January 1, 1999, the tandem switching charge imposed pursuant to paragraph (a)(2)(ii) of this section shall be set to recover the amount prescribed in paragraph (g)(1) of this section plus one half of the remaining portion of the tandem switching revenue requirement then being recovered through the interconnection charge recovered by §§ 69.124, 69.153, and 69.155, excluding multiplexer and dedicated port costs recovered in accordance with paragraph (l) of this section.

(3) Beginning January 1, 2000, the tandem switching charge imposed pursuant to paragraph (a)(2)(ii) of this section shall be set to recover the entire interstate tandem switching revenue requirement, including that portion formerly recovered through the interconnection charge recovered in §§ 69.124, 69.153, and 69.155, and excluding multiplexer and dedicated port costs recovered in accordance with paragraph (l) of this section.

(4) A local exchange carrier that is subject to price cap regulation as that term is defined in § 61.3(x) of this chapter shall calculate its tandem switching revenue requirement as used in this paragraph by dividing the tandem switching revenue requirement that was included in the original interconnection charge by the original interconnection charge, and then multiplying this result by the annual revenues recovered through the interconnection charge, described in § 69.124, as of June 30, 1997.

* * * * *

(l) In addition to the charges described in this section, price cap local exchange carriers shall establish separate charges for multiplexers and dedicated trunk ports used in conjunction with the tandem switch as follows:

(1) Local exchange carriers must establish a traffic-sensitive charge for

DS3/DS1 multiplexers used on the end office side of the tandem switch, assessed on purchasers of common transport to the tandem switch. This charge must be expressed in dollars and cents per access minute of use. The maximum charge shall be calculated by dividing the total costs of the multiplexers on the end office-side of the tandem switch by the serving wire center side of the tandem switch by the projected annual access minutes of use calculated for purposes of recovery of common transport costs in paragraph (c) of this section. A similar charge shall be assessed for DS1/voice-grade multiplexing provided on the end-office side of analog tandem switches.

(2)(i) Local exchange carriers must establish a flat-rated charge for dedicated DS3/DS1 multiplexing on the serving wire center side of the tandem switch provided in conjunction with dedicated DS3 transport service from the serving wire center to the tandem switch. This charge shall be assessed on interexchange carriers purchasing tandem-switched transport in proportion to the number of DS3 trunks provisioned for that interexchange carrier between the serving wire center and the tandem-switch.

(ii) Local exchange carriers must establish a flat-rated charge for dedicated DS1/voice-grade multiplexing provided on the serving wire center side of analog tandem switches. This charge may be assessed on interexchange carriers purchasing tandem-switched transport in proportion to the interexchange carrier's transport capacity on the serving wire center side of the tandem.

(3) Price cap local exchange carriers may recover the costs of dedicated trunk ports on the serving wire center side of the tandem switch only through flat-rated charges expressed in dollars and cents per trunk port and assessed upon the purchaser of the dedicated trunk terminating at the port.

§ 69.122 [Removed]

18. Section 69.122 is removed.

19. Section 69.123 is amended by adding paragraph (f) to read as follows:

§ 69.123 Density pricing zones for special access and switched transport.

* * * * *

(f)(1) An incumbent local exchange carrier that establishes density pricing zones under this section must reallocate additional amounts recovered under the interconnection charge prescribed in § 69.124 to facilities-based transport rates, reflecting the higher costs of serving lower-density areas. Each incumbent local exchange carrier must reallocate costs from the interconnection charge each time it increases the differential between prices in density zones two and one or between three and one.

(2) Any incumbent local exchange carrier that has already deaveraged its rates on January 1, 1998 must reallocate an amount equivalent to that described in paragraph (f)(1) of this section from the interconnection charge prescribed in § 69.124 to its transport services.

(3) Price cap local exchange carriers shall reassign to direct-trunked transport and tandem-switched transport categories or subcategories interconnection charge amounts reallocated under paragraph (f)(1) or (f)(2) of this section in a manner that reflects the way density pricing zones are being implemented by the incumbent local exchange carrier.

20. Section 69.124 is revised to read as follows:

§ 69.124 Interconnection charge.

(a) For telephone companies not subject to price cap regulation, an interconnection charge expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers and upon all other persons using the telephone company local transport network.

(b) For telephone companies not subject to price cap regulation, the interconnection charge shall be computed by subtracting entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signalling transport revenues from the part 69 transport revenue requirement, and dividing by the total interstate local transport minutes.

21. Section 69.125 is amended by revising paragraph (a) to read as follows:

§ 69.125 Dedicated signalling transport.

(a) Dedicated signalling transport shall consist of two elements, a signalling link charge and a signalling transfer point (STP) port termination charge.

* * * * *

22. Section 69.126 is revised to read as follows:

§ 69.126 Nonrecurring charges.

Incumbent local exchange carriers shall not assess any nonrecurring charges for service connection when an interexchange carrier converts trunks from tandem-switched transport to direct-trunked transport or when an interexchange carrier orders the disconnection of overprovisioned trunks, until six months after the effective date of the tariffs eliminating the unitary pricing option for tandem-switched transport.

23. Subpart C is revised to read as follows:

Subpart C—Computation of Charges for Price Cap Local Exchange Carriers

Sec.
69.151 Applicability.
69.152 End user common line for price cap local exchange carriers.
69.153 Presubscribed interexchange carrier charge (PICC).
69.154 Per-minute carrier common line charge.
69.155 Per-minute residual interconnection charge.
69.156 Marketing expenses.
69.157 Line port costs in excess of basic, analog service.

Subpart C—Computation of Charges for Price Cap Local Exchange Carriers

§ 69.151 Applicability.

This subpart shall apply only to telephone companies subject to the price cap regulations set forth in part 61 of this chapter.

§ 69.152 End user common line for price cap local exchange carriers.

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service or Centrex service to the extent they do not pay carrier common line charges. A charge that is expressed in dollars and cents per line per month shall be assessed upon providers of public telephones. Such charge shall be assessed for each line between the premises of an end user, or public telephone location, and a Class 5 office that is or may be used for local exchange service transmissions.

(b) Except as provided in paragraphs (d) through (i) of this section, the maximum single line rate or charge shall be computed:

(1) By dividing one-twelfth of the projected annual revenue requirement for the End User Common Line element by the projected average number of local exchange service subscriber lines in use during such annual period, only so long as a per-minute carrier common line charge is assessed or the multi-line PICC defined in § 69.153 recovers common line revenues.

(2) By dividing one-twelfth of the projected annual revenues permitted for the common line basket under the Commission's price cap rules, as set forth in part 61 of this chapter, by the projected average number of local exchange service subscriber lines in use during such annual period, if no per-minute carrier common line charge is assessed and the multi-line PICC

defined in § 69.153 does not recover any common line revenues.

(3) Provided, however, that the charge for each local exchange service subscriber line shall not exceed $9.00 as adjusted by the inflation factor computed under paragraph (k) of this section.

(c) The charge for each subscriber line associated with a public telephone shall be equal to the monthly charge computed in accordance with paragraph (b) of this section.

(d)(1) Through December 31, 1997, the monthly charge for each primary residential or single line business local exchange service subscriber line shall be the charge computed in accordance with paragraph (b) of this section, or $3.50, whichever is lower.

(2) Beginning January 1, 1998, the maximum monthly charge for each primary residential or single line business local exchange service subscriber line shall be the charge computed in accordance with paragraph (b) of this section, or $3.50, whichever is lower.

(e)(1) Through December 31, 1997, the monthly charge for each non-primary residential local exchange service subscriber line shall be the charge computed in accordance with paragraph (b) of this section, or $3.50, whichever is lower.

(2) Beginning January 1, 1998, the maximum monthly charge for each non-primary residential local exchange service subscriber line shall be the lower of:

(i) The maximum charge computed in accordance with paragraph (b) of this section; or

(ii) $5.00. On January 1, 1999, this amount shall be adjusted by the inflation factor computed under paragraph (k) of this section, and increased by $1.00. On July 1, 2000, and in each subsequent year, this amount shall be adjusted by the inflation factor computed under paragraph (k) of this section, and increased by $1.00.

(3) Where the local exchange carrier provides a residential line to another carrier so that the other carrier may resell that residential line to a residence that already receives a primary residential line, the local exchange carrier may collect the non-primary residential charge described in paragraph (e) of this section from the other carrier.

(f) Except as provided in paragraphs (n) and (o) of this section, the charge for each primary residential local exchange service subscriber line shall be the same as the charge for each single line business local exchange service subscriber line.

(g) A line shall be deemed to be a residential subscriber line if the subscriber pays a rate for such line that is described as a residential rate in the local exchange service tariff.

(h) [Reserved]

(i) A line shall be deemed to be a single line business subscriber line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone company.

(j) No charge shall be assessed for any WATS access line.

(k)(1) On January 1, 1999:

(i) The ceiling for multi-line business subscriber lines under paragraph (b)(3) of this section will be adjusted to reflect inflation as measured by the change in GDP–PI for the 18 months ending September 30, 1998.

(ii) The ceiling for non-primary residential subscriber lines under paragraph (e)(2)(ii) of this section will be adjusted to reflect inflation as measured by the change in GDP–PI for the 12 months ending September 30, 1998.

(2) On July 1, 2000, the ceiling for multi-line business subscriber lines and non-primary residential subscriber lines will be adjusted to reflect inflation as measured by the change in GDP–PI for the 18 months ending on March 31, 2000.

(3) On July 1 of each subsequent year, the ceiling for multi-line business subscriber lines and non-primary residential subscriber lines will be adjusted to reflect inflation as measured by the change in GDP–PI for the 12 months ending on March 31 of the year the adjustment is made.

(l)(1) Beginning January 1, 1998, local exchange carriers shall assess no more than one end user common line charge as calculated under the applicable method under paragraph (e) of this section for Basic Rate Interface integrated services digital network (ISDN) service.

(2) Local exchange carriers shall assess no more than five end user common line charges as calculated under paragraph (b) of this section for Primary Rate Interface ISDN service.

(m) In the event the local exchange carrier charges less than the maximum end user common line charge for any subscriber lines, the local exchange carrier may not recover the difference between the amount collected and the maximum from carrier common line charges or PICCs.

(n) Through December 31, 1997, the End User Common Line charge for a residential subscriber shall be 50% of the charge specified in paragraphs (b) and (d) of this section if the residential local exchange service rate for such subscribers is reduced by an equivalent amount, provided that such local exchange service rate reduction is based upon a means test that is subject to verification.

(o) Paragraphs (o)(1) and (o)(2) of this section are effective through December 31, 1997.

(1) The End User Common Line charge for residential subscribers shall be reduced to the extent of the state assistance as calculated in paragraph (o)(2) of this section, or waived in full if the state assistance equals or exceeds the residential End User Common Line charge under the circumstances described in this paragraph. In order to qualify for this waiver, the subscriber must be eligible for and receive assistance or benefits provided pursuant to a narrowly targeted telephone company lifeline assistance program, requiring verification of eligibility, implemented by the state or local telephone company. A state or local telephone company wishing to implement this End User Common Line reduction or waiver for its subscribers shall file information with the Commission Secretary demonstrating that its plan meets the criteria set out in this section and showing the amount of state assistance per subscriber as described in paragraph (o)(2) of this section. The reduction or waiver of the End User Common Line charge shall be available as soon as the Commission certifies that the state or local telephone plan satisfies the criteria set out in this paragraph and the relevant tariff provisions become effective.

(2)(i) The state assistance per subscriber shall be equal to the difference between the charges to be paid by the participating subscribers and those to be paid by other subscribers for comparable monthly local exchange service, service connections and customer deposits, except that benefits or assistance for connection charges and deposit requirements may only be counted once annually. In order to be included in calculating the state assistance, such benefits must be a single telephone line to the household's principal residence.

(ii) The monthly state assistance per participating subscriber shall be calculated by adding the amounts calculated in paragraphs (o)(2)(ii)(A) and (o)(2)(ii)(B) of this section.

(A) The amount of the monthly state assistance per participating subscriber for local exchange service shall be calculated by dividing the annual difference between charges paid by all participating subscribers for residential

local exchange service and the amount which would have been charged to non-qualifying subscribers for comparable service by twelve times the number of subscribers participating in the state assistance program. Estimates may be used when historic data are not available.

(B) The amount of the monthly state assistance for service connections and customer deposits per participating subscriber shall be calculated by determining the annual amount of the reductions in these charges for participating subscribers each year and dividing this amount by twelve times the number of participating subscribers. Estimates may be used when historic data are not available.

(p) Through December 31, 1997, in connection with the filing of access tariffs pursuant to § 69.3(a), telephone companies shall calculate for the association their projected revenue requirement attributable to the operation of § 69.104 (n) through (o). The projected amount will be adjusted by the association to reflect the actual lifeline assistance benefits paid in the previous period. If the actual benefits exceeded the projected amount for that period, the differential will be added to the projection for the ensuing period. If the actual benefits were less than the projected amount for that period, the differential will be subtracted from the projection for the ensuing period. Through December 31, 1997, the association shall so adjust amounts to the Lifeline Assistance revenue requirement, bill and collect such amounts from interexchange carriers pursuant to § 69.117 and distribute the funds to qualifying telephone companies pursuant to § 69.603(d).

§ 69.153 Presubscribed interexchange carrier charge (PICC).

(a) A charge expressed in dollars and cents per line may be assessed upon the subscriber's presubscribed interexchange carrier to recover the common line revenues permitted under the price cap rules in part 61 of this chapter that cannot be recovered through the end user common line charge established under § 69.152, residual interconnection charge revenues, and certain marketing expenses described in § 69.156(a). In the event the ceilings on the PICC prevent the PICC from recovering all the residual common line, residual interconnection charge revenues, and marketing expenses, the PICC shall recover all residual common line revenues before it recovers residual interconnection charge revenues, and all residual interconnection charge revenues before it recovers marketing expenses.

(b) If an end-user customer does not have a presubscribed interexchange carrier, the local exchange carrier may collect the PICC directly from the end user.

(c) The maximum monthly PICC for primary residential subscriber lines and single-line business subscriber lines shall be the lower of:

(1) One twelfth of the sum of annual common line revenues and residual interconnection charge revenues permitted under our price cap rules divided by the projected average number of local exchange service subscriber lines in use during such annual period, minus $3.50; or

(2) $0.53. On January 1, 1999, this amount shall be adjusted by the inflation factor computed under paragraph (e) of this section, and increased by $0.50. On July 1, 2000, and in each subsequent year, this amount shall be adjusted by the inflation factor computed under paragraph (e) of this section, and increased by $0.50.

(d) To the extent that a local exchange carrier cannot recover its full common line revenues, residual interconnection charge revenues, and those marketing expense revenues described in § 69.156(a) permitted under price cap regulation through the recovery mechanisms established in § 69.152, paragraph (c) of this section, and § 69.156 (b) and (c), the local exchange carrier may assess a PICC on multi-line business subscriber lines and non-primary residential subscriber lines.

(1) The maximum monthly PICC for non-primary residential subscriber lines shall be the lower of:

(i) One twelfth of the annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under the price cap rules set forth in part 61 of this chapter, less the maximum amounts permitted to be recovered through the recovery mechanisms under § 69.152, paragraph (c) of this section, and § 69.156 (b) and (c), divided by the total number of projected non-primary residential and multi-line business subscriber lines in use during such annual period; or

(ii) $1.50. On January 1, 1999, this amount shall be adjusted by the inflation factor computed under paragraph (e) of this section, and increased by $1.00. On July 1, 2000, and in each subsequent year, this amount shall be adjusted by the inflation factor computed under paragraph (e) of this section, and increased by $1.00.

(2) If the maximum monthly PICC for non-primary residential subscriber lines is determined using paragraph (d)(1)(i) of this section, the maximum monthly PICC for multi-line business subscriber lines shall equal the maximum monthly PICC of non-primary residential subscriber lines. Otherwise, the maximum monthly PICC for multi-line business lines shall be the lower of:

(i) One twelfth of the annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under this part and part 61 of this chapter, less the maximum amounts permitted to be recovered through the recovery mechanisms under § 69.152, paragraphs (c) and (d)(1)(i) of this section, and § 69.156 (b) and (c), divided by the total number of projected multi-line business subscriber lines in use during such annual period; or

(ii) $2.75. On January 1, 1999, this amount shall be adjusted by the inflation factor computed under paragraph (e) of this section, and increased by $1.50. On July 1, 2000, and in each subsequent year, this amount shall be adjusted by the inflation factor computed under paragraph (e) of this section, and increased by $1.50.

(e) For the PICC ceiling for primary residential subscriber lines and single-line business subscriber lines under paragraph (c)(2) of this section, non-primary residential subscriber lines under paragraph (d)(1)(ii) of this section, and multi-line business subscriber lines under paragraph (d)(2)(ii) of this section:

(1) On January 1, 1999, the ceiling will be adjusted to reflect inflation as measured by the change in GDP–PI for the 12 months ending September 30, 1998.

(2) On July 1, 2000, the ceiling will be adjusted to reflect inflation as measured by the change in GDP–PI for the 18 months ending on March 31, 2000.

(3) On July 1 of each subsequent year, the ceiling will be adjusted to reflect inflation as measured by the change in GDP–PI for the 12 months ending on March 31 of the year the adjustment is made.

(f)(1) Local exchange carriers shall assess no more than one PICC as calculated under the applicable method under paragraph (d)(1) of this section for Basic Rate Interface integrated services digital network (ISDN) service.

(2) Local exchange carriers shall assess no more than five PICCs as calculated under paragraph (d)(2) of this section for Primary Rate Interface ISDN service.

§ 69.154 Per-minute carrier common line charge.

(a) Local exchange carriers may recover a per-minute carrier common

line charge from interexchange carriers, collected on originating access minutes and calculated using the weighting method set forth in paragraph (c) of this section. The maximum such charge shall be the lower of:

(1) The per-minute rate that would recover annual common line revenues permitted less the maximum amounts allowed to be recovered under §§ 69.152 and 69.153; or

(2) The sum of the local switching, carrier common line and interconnection charge charges assessed on originating minutes on December 31, 1997, minus the local switching charges assessed on originating minutes.

(b) To the extent that paragraph (a) of this section does not recover from interexchange carriers all permitted carrier common line revenue, the excess may be collected through a per-minute charge on terminating access calculated using the weighting method set forth in paragraph (c) of this section.

(c) For each Carrier Common Line access element tariff, the premium originating Carrier Common Line charge shall be set at a level that recovers revenues allowed under paragraphs (a) and (b) of this section. The non-premium charges shall be equal to .45 multiplied by the premium charges.

§ 69.155 Per-minute residual interconnection charge.

(a) Local exchange carriers may recover a per-minute residual interconnection charge on originating access. The maximum such charge shall be the lower of:

(1) The per-minute rate that would recover the total annual residual interconnection charge revenues permitted less the portion of the residual interconnection charge allowed to be recovered under § 69.153; or

(2) The sum of the local switching, carrier common line and residual interconnection charges assessed on originating minutes on December 31, 1997, minus the local switching charges assessed on originating minutes, less the maximum amount allowed to be recovered under § 69.154(a).

(b) To the extent that paragraph (a) of this section prohibits a local exchange carrier from recovering all of the residual interconnection charge revenues permitted, the residual may be collected through a per-minute charge on terminating access.

(c) Any charge assessed pursuant to paragraph (a) or (b) of this section shall be assessed only upon minutes utilizing the local exchange carrier's local transport service.

§ 69.156 Marketing expenses.

(a) Local exchange carriers shall recover marketing expenses that are allocated to the common line and traffic sensitive baskets, and the switched services within the trunking basket pursuant to §§ 32.6610 of this chapter and 69.403.

(b) The expenses described in paragraph (a) of this section may be recovered from non-primary residential subscriber lines, by increasing the end user common line charge described in § 69.152(e). The amount of marketing expenses permitted to be recovered in this manner shall be the total marketing expenses described in paragraph (a) of this section divided by the sum of non-primary residential lines and multi-line business lines. In no event shall the end user common line charge for these lines exceed the lower of the ceilings established in § 69.152 (b)(3) and (e)(2)(ii).

(c) The expenses described in paragraph (a) of this section may be recovered from multi-line business subscriber lines, by increasing the end user common line charge described in § 69.152(b). The amount permitted to be recovered in this manner shall be the total marketing expenses described in paragraph (a) of this section divided by the sum of non-primary residential lines and multi-line business lines. In no event shall the end user common line charge for these lines exceed the ceiling established in § 69.152(b)(3).

(d) In the event that the ceilings set forth in paragraphs (b) and (c) of this section, and § 69.153(d) prevent a local exchange carrier from recovering fully the marketing expenses described in paragraph (a) of this section, the local exchange carrier may recover the remainder through a per-minute assessment on originating access minutes, so long as the charge for originating access does not exceed the amount defined in § 69.155(a)(2) less the maximum permitted to be recovered under § 69.155(a).

(e) In the event that the ceilings set forth in paragraphs (b), (c) and (d) of this section, and § 69.153(d) prevent a local exchange carrier from recovering fully the marketing expenses described in paragraph (a) of this section, the local exchange carrier may recover the remainder through a per-minute assessment on terminating access minutes.

(f) The amount of marketing expenses that may be recovered each year shall be adjusted in accordance with the price cap rules set forth in part 61 of this chapter.

§ 69.157 Line port costs in excess of basic, analog service.

To the extent that the costs of ISDN line ports, and line ports associated with other services, exceed the costs of a line port used for basic, analog service, local exchange carriers may recover the difference through a separate monthly end user charge.

§ 69.303 [Amended]

24. Section 69.303 is amended by removing paragraph (a) and the paragraph designation ''(b)''.

§ 69.304 [Amended]

25. Section 69.304 is amended by removing paragraph (c).

26. Section 69.305 is amended by revising paragraphs (b) and (d), and adding paragraph (e) to read as follows:

§ 69.305 Carrier cable and wire facilities (C&WF).

* * * * *

(b) Carrier C&WF, other than WATS access lines, not assigned pursuant to paragraph (a), (c), or (e) of this section that is used for interexchange services that use switching facilities for origination and termination that are also used for local exchange telephone service shall be apportioned to the local Transport elements.

* * * * *

(d) All Carrier C&WF that is not apportioned pursuant to paragraphs (a), (b), (c), and (e) of this section shall be assigned to the Special Access element.

(e) Carrier C&WF that is used to provide transmission between the local exchange carrier's signalling transfer point and the local switch shall be assigned to the local switching category.

27–28. Section 69.306 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 69.306 Central office equipment (COE).

* * * * *

(c) COE Category 2 (Tandem Switching Equipment) that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States* v. *Western Electric Co.* shall be assigned to the tandem switching charge subelement and the interconnection charge element. COE Category 2 which is associated with the signal transfer point function shall be assigned to the local switching category. COE Category 2 which is used to provide transmission facilities between the local exchange carrier's signalling transfer point and the database shall be assigned to the Line Information Database subelement at § 69.120(a). All other COE Category 2 shall be assigned to the interexchange category.

(d) COE Category 3 (Local Switching Equipment) shall be assigned to the Local Switching element except as provided in paragraph (a) of this

section; and that, for telephone companies subject to price cap regulation set forth in part 61 of this chapter, line-side port costs shall be assigned to the Common Line rate element.

(e) COE Category 4 (Circuit Equipment) shall be apportioned among the interexchange category and the Common Line, Transport, and Special Access elements. COE Category 4 shall be apportioned in the same proportions as the associated Cable and Wireless Facilities; except that any DS1/voice-grade multiplexer investment associated with analog local switches and assigned to the local transport category by this section shall be reallocated to the local switching category.

§ 69.307 [Amended]

29. Section 69.307 is amended by removing paragraph (c).

§ 69.308 [Removed]

30. Section 69.308 is removed.

31. Section 69.309 is revised to read as follows:

§ 69.309 Other investment.

Investment that is not apportioned pursuant to §§ 69.302 through 69.307 shall be apportioned among the interexchange category, the billing and collection category and access elements in the same proportions as the combined investment that is apportioned pursuant to §§ 69.303 through 69.307.

32. Section 69.401 is amended by revising paragraph (b) to read as follows:

§ 69.401 Direct expenses.

* * * * *

(b) Plant Specific Operations Expenses in Accounts 6210, 6220, and 6230, shall be apportioned among the interexchange category and access elements on the basis of the apportionment of the investment in Accounts 2210, 2220, and 2230, respectively; provided that any expenses associated with DS1/voice-grade multiplexers, to the extent that they are not associated with an analog tandem switch, assigned to the local transport category by this paragraph shall be reallocated to the local switching category; provided further that any expenses associated with common channel signalling included in Account 6210 shall be assigned to the local transport category.

* * * * *

§ 69.406 [Amended]

33. Section 69.406 is amended by removing paragraph (a)(9).

§ 69.410 [Removed]

34. Section 69.410 is removed.

35. Section 69.411 is revised to read as follows:

§ 69.411 Other expenses.

Except as provided in §§ 69.412, 69.413, and 69.414, expenses that are not apportioned pursuant to §§ 69.401 through 69.409 shall be apportioned among the interexchange category and all access elements in the same manner as § 69.309 Other investment.

§ 69.501 [Amended]

36. Section 69.501 is amended by removing and reserving paragraph (a).

37. Section 69.502 is revised to read as follows:

§ 69.502 Base factor allocation.

Projected revenues from the following shall be deducted from the base factor portion to determine the amount that is assigned to the Carrier Common Line element:

(a) End User Common Line charges, less any marketing expense revenues recovered through end user common line charges pursuant to § 69.156;

(b) Special Access surcharges; and

(c) The portion of frozen per-line support that carriers receive pursuant to § 54.303 that is attributable to LTS payments received prior to January 1, 1998.

§ 69.611 [Removed]

38. Section 69.611 is removed.

[FR Doc. 97–14628 Filed 6–10–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket Nos. 94–1 and 96–262; FCC 97–159]

Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On May 7, 1997, the Federal Communications Commission adopted the Fourth Report and Order in CC Docket No. 94–1, Second Report and Order in CC Docket No. 96–262, revising its price cap regulations applicable to incumbent local exchange carriers (incumbent LECs). Specifically, the Commission replaced the choice of three X-Factors in the current price cap plan with a single X-Factor of 6.5 percent. The Commission also eliminated sharing obligations, but retained the low-end adjustment mechanism. The Commission adopts a fixed X-Factor to remain in effect until the next performance review, rather than updating the X-Factor annually on the basis of a five-year industry-wide moving average. In the *Fourth Further Notice* in CC Docket No. 94–1, the Commission sought comment on revising the common line PCI formula and the price cap exogenous cost rules. The Commission adopted revisions to the common line PCI formula in its *Access Reform First Report and Order* adopted concurrently with this Order, and so does not need to adopt any further revisions here. Also, as a result of its decision to adopt a fixed X-Factor, the Commission does not need to address issues regarding the price cap exogenous cost rules. The Commission requires price cap LECs to reset their price cap indices as of July 1, 1997, to be at the levels that would have been in effect had the 6.5 percent X-Factor taken effect concurrently with the 1996 annual access tariffs.

EFFECTIVE DATE: June 16, 1997.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Competitive Pricing Division, Common Carrier Bureau, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted May 7, 1997, and released May 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room 230, 1919 M St., N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, N.W., Washington, D.C. 20037.

Regulatory Flexibility Analysis

In the *Fourth Further Notice* in CC Docket No. 94–1, 60 FR 52362 (October 6, 1995), we certified that the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, did not apply to this rulemaking proceeding because none of the rule amendments under consideration would have a significant economic impact on a substantial number of small entities. (The RFA was amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA).) Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Carriers subject to price cap regulation for local exchange access affected by the rule amendments

adopted in this Order are generally large corporations or the affiliates of such corporations. No party commented specifically in response to the analysis in our certification.

In passing the Telecommunications Act of 1996 (1996 Act), Congress sought to establish ''a pro-competitive, deregulatory national policy framework'' for the United States telecommunications industry. *See* Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996). These fundamental changes in the structure and dynamics of the telecommunications industry wrought by the 1996 Act now necessitate that the Commission review its existing access charge regulations to ensure that they are consistent and compatible with the 1996 Act's far-reaching changes. The rule revisions we adopt based on the record developed in the *Fourth Further Notice* in CC Docket No. 94–1, and the *Notice* in CC Docket No. 96–262, will facilitate the deregulatory policy established in the 1996 Act. In particular, our elimination of sharing obligations removes a major impediment to deregulating individual interstate access services at the time competitive conditions for a particular service warrant deregulation.

The rules we adopt in this Order are applicable only to LECs subject to price cap regulation. Currently, 13 incumbent LECs are subject to price cap regulation. We tentatively concluded in the *Fourth Further Notice* in CC Docket No. 94–1 that the price cap LECs are not ''small business concerns'' because they are generally large corporations or affiliates of such corporations. We hereby affirm this analysis.

The Commission will send a copy of this final certification, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. 605(b).

Summary of Report and Order

In conjunction with the *Access Reform First Report and Order* and the *Universal Service Order,* adopted concurrently with this Order, the Commission adopts reforms needed to set the stage for the progressive deregulation of incumbent LECs with the development of competition.

Under price cap regulation, LEC interstate access services have been placed in one of four groups of access services, called baskets. A price cap index (PCI) limits the weighted average of rate increases for each basket to the rate of inflation, the Gross Domestic Product Price Deflator (GDP-PI), minus an ''X-Factor.'' The X-Factor is intended to measure the amount by which LECs are more productive than the economy as a whole.

Under our prior price cap rules, the baseline X-Factor was based on the average of the short-term and long-term trends in rate reductions prior to our adoption of the original price cap plan in 1990, plus a consumer productivity dividend (CPD) of 0.5 percent. We designed the X-Factor and the consumer productivity dividend so that, at minimum, rates would decline more quickly than they had declined before 1990, and so would assure that the first benefits of price cap regulation would flow to access customers in the form of lower rates. In the *First Report and Order* in CC Docket No. 94–1, 60 FR 19526 (April 19, 1995), we tentatively concluded that an analysis that directly measured the growth of LEC productivity and input prices would provide a better basis for prescribing an X-Factor than the methodology the Commission used in previous Orders. In the *Fourth Further Notice* in CC Docket No. 94–1, 60 FR 52362 (October 6, 1995), the Commission invited comment on the total factor productivity (TFP) methodology and other alternatives for calculating the X-Factor. The Commission invited parties to supplement the record in the *Notice of Proposed Rulemaking* in CC Docket No. 96–262, 62 FR 4670 (January 31, 1997). We find that the record supports prescribing a single X-Factor of 6.5 percent, based on our conclusions regarding a reasonable method of calculating LEC TFP and input prices, and our decision to retain the 0.5 percent CPD. This X-Factor is reasonable and challenging, and falls within a range of reasonable X-Factors.

Under our current price cap rules, incumbent price cap LECs are permitted to choose among three X-Factors, two of which include obligations to share certain earnings. Sharing requires incumbent LECs to ''share'' half or all earnings above specified rates of return with their access customers in the form of lower access rates during the next year. We adopt a system of pure price caps, without sharing, because sharing tends to blunt the efficiency incentives that we sought to create with price cap regulation. We conclude that, under the price cap rules we adopt today, any benefits of retaining sharing are outweighed by the benefits of eliminating sharing. We consider the X-Factor we adopt today to be a much more reliable measure of incumbent LEC potential productivity gains. Therefore, we have substantially more confidence that this X-Factor will flow through a reasonable portion of LEC productivity gains to access customers. We also find that, because we establish a price cap plan with only one X-Factor, a matching mechanism is no longer necessary. To guard against our new X-Factor requiring individual LECs to charge unreasonably low rates, we will retain our current low-end adjustment mechanism, which permits LECs, after earning less than 10.25 percent in a calendar year, to make a one time upward adjustment their rates in the next tariff year, equal to the amount that would have allowed them to earn 10.25 percent in the calendar year.

This Order adopts a single X-Factor. The Commission adopted multiple X-Factor options in prior orders because of concerns that differences in LEC service areas might affect their abilities to increase their productivity growth. The Order observes that most of the price cap companies have selected the highest, no-sharing X-Factor option in our current rules, and concludes that the heterogeneity among LECs subject to price cap regulation does not affect their productivity growth as much as the Commission thought previously.

We sought comment on whether to keep the X-Factor up to date by basing it on an industry-wide moving average of TFP, or to continue to update the X-Factor in occasional performance reviews. We decide, in light of the fundamental changes to the marketplace resulting from the new competitive paradigm of the 1996 Act, that the better course is to select a new generally applicable X-Factor, based on the current record, that will remain in place until we change it in a new performance review.

We also sought comment on whether it is necessary to eliminate the ''g/2'' term from the common line PCI formula to conform to a TFP-based X-Factor. In the *Access Reform First Report and Order* adopted concurrently with this Order, we decide to eliminate the ''g/2'' term after a short transition period. In this *Order,* we conclude that no further revisions to the common line PCI formula are warranted.

The Commission sought comment on fashioning an X-Factor that would routinely incorporate cost changes currently considered exogenous into the PCI formula, which would eliminate the need for separate exogenous cost rules. Because the Commission adopts a fixed X-Factor in this Order, the X-Factor will not routinely incorporate exogenous cost changes into the PCI formula, and so no changes to the exogenous cost rules are warranted at this time.

The Order directs LECs to recalculate their price cap ceilings for July 1, 1997, to be at the levels they would have been had the 6.5 percent X-Factor had taken effect concurrently with their 1996 annual access filings. The Order finds that this adjustment is necessary because the interim price cap plan was intended to remain for a short time, and that the local companies should not be permitted to benefit indefinitely because the more accurate 6.5 percent X-Factor was not adopted sooner. The Commission's repeated emphasis that the X-Factor adopted in the *LEC Price Cap Performance Review* was ''interim'' should reasonably have put carriers on notice that another adjustment of the type we had adopted in that order would be possible—perhaps beginning with the 1995 tariff year, the first year under the interim X-Factor. This adjustment affects only future rate levels; it does not have any retroactive effect on past prices or earnings.

In the Third Further Notice of Proposed Rulemaking in CC Docket No. 94–1, 60 FR 52345 (September 26, 1995), the Commission sought comment on establishing rules governing the price cap treatment of video dialtone services. The Order concludes that one of the provisions of the 1996 Act makes those issues moot.

Finally, the Order directs price cap LECs to file tariffs making adjustments to their rates to reflect these revisions to the price cap rules no later than June 25, 1997, to take effect July 1, 1997. Those LECs wishing to raise any rates in these filings must file no later than June 16, 1997. We also direct price cap LECs to file revised tariff review plans (TRPs) containing adjustments to their PCIs, APIs, and SBIs no later than June 2, 1997.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to authority contained in §§ 4(i), 4(j), 201–205, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, and § 553 of Title 5, United States Code, that Part 61 of the Commission's Rules, 47 CFR Part 61, *is amended* as set forth below.

It is further ordered that the provisions in this Order will be effective June 16, 1997. We find good cause under 5 U.S.C. § 553(d)(3) to make the rules effective less than thirty days after publication, because the local exchange carriers subject to price cap regulation must file tariffs by June 16, in order for them to be effective on July 1, 1997, as required by § 69.3 of the Commission's rules, 47 CFR 69.3. In addition, to ensure that the local exchange carriers subject to price cap regulation have actual notice of these rules immediately following their release, we are serving those entities by certified, first class mail.

It is further ordered that local exchange carriers subject to price cap regulation *shall file* tariffs and revised tariff review plans in accordance with the requirements set forth above. These requirements are subject to review by the Office of Management and Budget, and will be effective upon that approval.

It is further ordered that the motion filed by Ad Hoc Telecommunications Users Committee on February 23, 1996, *is dismissed*.

List of Subjects in 47 CFR Part 61

Communications Common Carriers, Tariffs.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Rule Changes

Part 61 of title 47 of the Code of Federal Regulations is amended as follows:

PART 61—TARIFFS

1. The authority citation continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

2. Section 61.45 is amended by revising paragraphs (b)(1), (b)(2), revising the definition for X in (c)(1), revising the last sentence of paragraph (c)(2), redesignating paragraph (d)(2) as (d)(2)(i), adding new paragraph (d)(2)(ii), and removing and reserving paragraph (h) to read as follows:

§ 61.45 Adjustments to the PCI for Local Exchange Carriers

* * * * *

(b) * * *

(1) Notwithstanding the value of X defined in § 61.44(b), the X value applicable to the baskets specified in § 61.42(d)(2), (3), and (6) shall be 6.5%.

(2) For the basket specified in § 61.42(d)(4), the value of X, for all local exchange carriers subject to price cap regulation, shall be 3.0%.

* * * * *

(c)(1) * * *

X=productivity factor of 6.5%,

* * * * *

(c)(2) * * * For the purposes of this paragraph, and notwithstanding the value of X defined in § 61.44(b), the X value applicable to the basket specified in § 61.42(d)(1), shall be 6.5%.

* * * * *

(d) * * *

(2) (i) * * *

(ii) Local exchange carriers specified in § 61.41(a)(2) or (a)(3) shall not be subject to the sharing mechanism set forth in the Commission's *Second Report and Order* in Common Carrier Docket No. 87–313, FCC 90–314, adopted September 19, 1990, with respect to earnings accruing on or after July 1, 1997. This paragraph has no effect on any sharing obligation of any local exchange carrier relating to earnings accrued before July 1, 1997.

* * * * *

[FR Doc. 97–14746 Filed 6–10–97; 8:45 am]

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Wednesday
June 11, 1997

Part III

Department of Housing and Urban Development

24 CFR Part 570

Community Development Block Grants: New York Small Cities Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4155–P–01]

RIN 2506–AB91

Community Development Block Grants: New York Small Cities Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: Section 226 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (the Act) requires that HUD issue proposed and final rules for the requirements of the Community Development Block Grant program for the State of New York before issuing a Notice of Funding Availability (NOFA) for the 1997 New York Small Cities competition.

In proposing this rule, HUD is inviting public comments on the requirements of the Community Development Block Grants (CDBG) Small Cities Program for the State of New York (24 CFR part 570, subpart F). This proposed rule contains the current requirements for the program, with a few limited changes. The first change would be to delete § 570.421(a)(3), and add § 570.421(f) to eliminate the use of multiyear plans in the HUD-administered Small Cities Program for any NOFA published in calendar year 1997 or later. The second change involves grant limits. HUD is proposing to add § 570.421(g), to limit the maximum grant award, under a NOFA, to any single, eligible unit of general local government to $400,000, except that counties may apply for a maximum of $600,000 in HUD-administered Small Cities funds. HUD intends to make larger grants to honor multiyear plans approved in response to NOFAs issued prior to calendar year 1997. In order to implement the reduction of grant limits, HUD intends to restrict competition under future NOFAs to Single Purpose Grants. Another minor change is the deletion of obsolete references to the Fiscal Year 1995 competition in § 570.425(c), as well as a clarification of the application procedures in that paragraph.

DATES: *Comments due date:* July 11, 1997.

ADDRESSES: HUD invites interested persons to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. eastern time) at the above address. HUD will not accept comments sent by facsimile (FAX).

FOR FURTHER INFORMATION CONTACT: Cornelia Robertson Terry, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1322 (voice). (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5300–5320) permits each State to elect to administer all aspects of the Community Development Block Grant (CDBG) Program annual fund allocation for the nonentitlement areas within its jurisdiction. The policies and procedures for HUD's CDBG Small Cities Program in 24 CFR part 570, subpart F apply to grants for nonentitlement areas in States, such as New York, that did not elect to administer the CDBG Program.

Section 226 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (Pub. L. 104–134; approved April 26, 1996) (the Act) requires that HUD issue proposed and final rules for the requirements of the CDBG program for the State of New York before issuing a notice of funding availability for funds made available for fiscal year (FY) 1997.

In accordance with the provisions of section 226 of the Act, HUD is publishing this rule in order to solicit public comments on the requirements of the New York CDBG Small Cities Program. These requirements appear in 24 CFR part 570, subpart F. Although §§ 570.429 and 570.430 also appear in subpart F and are therefore set forth below, these sections only apply to the Small Cities Program in Hawaii.

Summary of Proposed Changes to Subpart F

Section 570.421—New York Small Cities Program Design

In this rule, HUD proposes to delete paragraph (a)(3) of § 570.421, and to add a new paragraph (f), which would eliminate the use of multiyear plans in the HUD-administered Small Cities Program for NOFAs published in calendar year 1997 or later. HUD intends, however, to continue to honor multiyear plans approved in response to NOFAs published prior to calendar year 1997. This rule also proposes to add a new paragraph (g) to the current regulations to provide that the maximum grant amount that HUD will award to an eligible unit of general local government in response to a NOFA published in calendar year 1997 or later is $400,000, except that counties could apply for a maximum of $600,000 in HUD-administered Small Cities grant funds. HUD will not be prohibited, however, from awarding larger grants as necessary to honor the terms of multiyear plans approved under the provisions of NOFAs published prior to calendar year 1997.

Section 570.425—HUD Review and Actions on Applications for New York State Applicants

This proposed rule would delete obsolete references to the FY 1995 competition from paragraph (c) of § 570.425. It would also add a sentence clarifying the application procedures regarding carrying an application over from a previous funding round or competition.

Justification for Reduced Comment Period

HUD's general policy in its notices of proposed rulemaking is to afford the public not less than 60 days for submission of comments, in accordance with HUD's regulations on rulemaking in 24 CFR 10.1. For this proposed rule, however, HUD is providing a 30-day public comment period. There are two reasons for this shortened public comment period. First, section 226 of the Act requires that HUD publish proposed and final rules for the New York State Small Cities program before it can publish any NOFA announcing the FY 1997 funding. HUD believes that a longer comment period will unnecessarily delay the FY 1997 program year. Second, the regulations for the Small Cities program in subpart F of part 570 had previously been published in their entirety in a proposed rule for public comment on September 15, 1994 (59 FR 47500), with a final rule

published December 27, 1994 (59 FR 66584). HUD believes that since the public is familiar with the issues relative to the earlier rulemaking process, and since the changes in this proposed rule are limited, the longer comment period is not necessary.

Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(1)(i) of HUD's regulations, published in a final rule on September 27, 1996 (61 FR 50914) and amended on April 2, 1997 (62 FR 15800), this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication, and by approving it certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would make limited changes that would not have a significant impact on small entities. Small entities are invited, however, to comment on any less burdensome alternatives for compliance with these regulations.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would make limited changes that would not have Federalism implications. As a result, this proposed rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance program number is 14.219, Community Development Block Grants—Small Cities Program.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, for the reasons set out in the preamble, 24 CFR part 570 is proposed to be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

2. Subpart F is revised to read as follows:

Subpart F—Small Cities Program

Sec.
570.420 General.
570.421 New York Small Cities Program Design.
570.422 Applications from joint applicants.
570.423 Application for the HUD-administered New York Small Cities Grants.
570.424 Grants for imminent threats to public health and safety.
570.425 HUD review and actions on applications for New York State applicants.
570.426 Program income.
570.427 Program amendments.
570.428 Reallocated funds.
570.429 Hawaii general and grant requirements.
570.430 Hawaii program operation requirements.
570.431 Citizen participation.
570.432 Repayment of section 108 loans.

SUBPART F—SMALL CITIES PROGRAM

§ 570.420 General.

(a) *HUD administration of nonentitlement CDBG funds.* Title I of the Housing and Community Development Act of 1974 permits each State to elect to administer all aspects of the Community Development Block Grant (CDBG) Program annual fund allocation for the nonentitlement areas within its jurisdiction. This subpart sets forth policies and procedures applicable to grants for nonentitlement areas in States that have not elected to administer the CDBG Program. States that elected to administer the program after the close of fiscal year 1984 cannot return administration of the program to HUD. A decision by a State to discontinue administration of the program would result in the loss of CDBG funds for nonentitlement areas in that State and the reallocation of those funds to all States in the succeeding fiscal year.

(b) *Scope and applicability.* (1) This subpart describes the policies and procedures of the Small Cities Program which apply to nonentitlement areas in States where HUD administers the CDBG Program. HUD currently administers the Small Cities Program in only two States—New York and Hawaii. This subpart principally addresses the requirements for New York, and §§ 570.429 and 570.430 identify special procedures applicable to Hawaii.

(2) The allocation of formula CDBG funds for use in nonentitlement areas of Hawaii and New York is as provided in subpart A of this part. The policies and procedures set forth in the following identified subparts of this part 570 apply to the HUD-administered Small Cities Program, except as modified or limited under the provisions thereof or this subpart:

(i) Subpart A—General Provisions;
(ii) Subpart C—Eligible Activities;
(iii) Subpart J—Grant Administration;
(iv) Subpart K—Other Program Requirements; and
(v) Subpart O—Performance Reviews.

(c) *Public notification requirements.* (1) Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. All competitive grants in the HUD-administered Small Cities Program in New York are affected by this legislation, and the requirements identified at 24 CFR part 4 apply to them. Imminent threat grants under

§ 570.424 and section 108 repayment grants under § 570.432 are not affected by section 102 as they are not competitive grants.

(2) The Hawaii HUD-administered Small Cities Program is not subject to section 102, since the funds are not distributed in a competitive manner.

(d) *Abbreviated consolidated plan.* Applications for the HUD-administered Small Cities Program which contain housing activities must include a certification that the proposed housing activities are consistent with the applicant's consolidated plan as described at 24 CFR part 91.

(e) *National and primary objectives.* (1) Each activity funded through the Small Cities Program must meet one of the following national objectives as defined under the criteria in § 570.208. Each activity must:

(i) Benefit low- and moderate-income families;

(ii) Aid in the prevention or elimination of slums or blight; or

(iii) Be an activity which the grantee certifies is designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

(2) In addition to the objectives described in paragraph (e)(1) of this section, with respect to grants made through the Small Cities Program, not less than 70 percent of the total of grant funds from each grant and Section 108 loan guarantee funds received under subpart M of this part within a fiscal year must be expended for activities which benefit low- and moderate-income persons under the criteria of §§ 570.208(a), or 570.208(d) (5) or (6). In the case of multiyear plans in New York State approved in response to NOFAs published prior to calendar year 1997, not less than 70 percent of the total funding for grants approved pursuant to a multiyear plan for a time period of up to 3 years must be expended for activities which benefit low- and moderate-income persons. Thus, 70 percent of the grant for year 1 of a multiyear plan approved in response to NOFAs published prior to calendar year 1997 must meet the 70 percent requirement, 70 percent of the combined grants from years 1 and 2 must meet the requirement, and 70 percent of the combined grants from years 1, 2, and 3 must meet the requirement. In determining the percentage of funds expended for such activity, the provisions of § 570.200(a)(3) (i), (iii), (iv), and (v) shall apply.

(Approved by the Office of Management and Budget under control number 2506–0060).

§ 570.421 New York Small Cities Program Design.

(a) *Selection system.* (1) *Competitive applications.* Each competitive application will be rated and scored against the following factors:

(i) Need-absolute number of persons in poverty as further explained in the NOFA;

(ii) Need-percent of persons in poverty as further explained in the NOFA;

(iii) Program Impact; and

(iv) Fair Housing and Equal Opportunity which may include assessment of the applicant's Section 3 plan and implementation efforts. The NOFA described in paragraph (b) of this section will contain a more detailed description of these factors, and the relative weight that each factor will be given.

(2) In addition HUD reserves the right to establish minimal thresholds for selection factors and otherwise select grants in accordance with § 570.425 and the applicable NOFA.

(3) *Imminent threats to public health and safety.* The criteria for these grants are described in § 570.424.

(4) *Repayment of section 108 loans.* The criteria for these grants are described in § 570.432.

(5) *Economic development grants.* HUD intends to use the Section 108 loan guarantee program to the maximum extent feasible to fund economic development projects in the nonentitlement areas of New York. In the event that there are not enough Section 108 loan guarantee funds available to fund viable economic development projects, or if a project needs a grant in addition to a loan guarantee to make it viable, or if the project does not meet the requirements of the Section 108 program but is eligible for a grant under this subpart, HUD will fund Economic Development applications as they are determined to be fundable in a specific amount by HUD up to the sum set aside for economic development projects in the notice of funding availability. HUD also has the option in a NOFA of funding economic development activities on a competitive basis, as a competitive application as described in paragraph (a)(1) of this section. In order for an applicant to receive Small Cities grant funds, the field office must determine that the economic development project will have a substantial impact on the needs identified by the applicant.

(b) *Notice of funding availability.* HUD will issue one or more Notice(s) of Funding Availability (NOFA) each fiscal year which will indicate the amount of funds available, the annual grant limits per grantee, type of grants available, the application requirements, and the rating factors that will be used for those grants which are competitive. A NOFA may set forth, subject to the requirements of this subpart, additional selection criteria for all grants.

(c) *Eligible applicants.* (1) Eligible applicants in New York are units of general local government, excluding: Metropolitan cities, urban counties, units of general local government which are participating in urban counties or metropolitan cities, even if only part of the participating unit of government is located in the urban county or metropolitan city. Indian tribes are also ineligible for assistance under this subpart. An application may be submitted individually or jointly by eligible applicants.

(2) Counties, cities, towns, and villages may apply and receive funding for separate projects to be done in the same jurisdiction. Only one grant will be made under each funding round for the same type of project to be located within the jurisdiction of a unit of general local government (e.g., both the county and village cannot receive funding for a sewer system to be located in the same village, but the county can receive funding for a sewer system that is located in the same village as a rehabilitation project for which the village receives funding). The NOFA will contain additional information on applicant eligibility.

(3) Counties may apply on behalf of units of general local government located within their jurisdiction when the unit of general local government has authorized the county to apply. At the time that the county submits its application for funding, it must submit a resolution by the governing body of the unit of local government that authorizes the county to submit an application on behalf of the unit of general local government. The county will be considered the grantee and will be responsible for executing all grant documents. The county is responsible for ensuring compliance with all laws, regulations, and Executive Orders applicable to the CDBG Program. HUD will deal exclusively with the county with respect to issues of program administration and performance, including remedial actions. The unit of general local government will be considered the grantee for the purpose

of determining grant limits. The unit of general local government's statistics will be used for purposes of the selection factors referred to in § 570.421(a).

(d) *Public service activities cap.* Public service activities may be funded up to a maximum of fifteen (15) percent of a State's nonentitlement allocation for any fiscal year. HUD may award a grant to a unit of general local government for public service activities with up to 100 percent of the funds intended for public service activities. HUD will apply the 15 percent statewide cap to public service activities by funding public service activities in the highest rated applications in each NOFA until the cap is reached.

(e) *Activities outside an applicant's boundaries.* An applicant may conduct eligible CDBG activities outside its boundaries. These activities must be demonstrated to be appropriate to meeting the applicant's needs and objectives, and must be consistent with State and local law. This provision includes using funds provided under this subpart in a metropolitan city or an urban county.

(f) *Multiyear plans.* HUD will not make any new multiyear commitments for NOFAs published in calendar year 1997 or later. HUD intends to continue to honor the terms of the multiyear plans that were approved under the provisions of NOFAs published prior to calendar year 1997.

(g) *Maximum grant amount.* The maximum grant amount that will be awarded to a single, eligible unit of general local government in response to a NOFA published in calendar year 1997 or later is $400,000, except that counties may apply for up to $600,000 in HUD-administered Small Cities funds. HUD may specify lower grant limits in the NOFA, which may include different limits for different types of grants available or different types of applicants. This paragraph (g) of this section does not prohibit HUD from awarding larger grants as necessary to honor the terms of multiyear plans that were approved under the provisions of NOFAs published prior to calendar year 1997.

§ 570.422 Applications from joint applicants.

Units of general local government may submit a joint application which addresses common problems faced by the jurisdictions, to the extent permitted by the NOFA. A joint application must be pursuant to a written cooperation agreement submitted with the application. The cooperation agreement must authorize one of the participating units of government to act as the lead applicant which will submit the application to HUD, and must delineate the responsibilities of each participating unit of government with respect to the Small Cities Program. The lead applicant is responsible for executing the application, certifications, and grant agreement, and ensuring compliance with all laws, regulations, and Executive Orders applicable to the CDBG Program. HUD will deal exclusively with the lead applicant with respect to issues of program administration and performance, including remedial actions. In the event of poor performance, HUD reserves the right to deny and/or restrict future funding to all units of general local government which are parties to the cooperation agreement.

§ 570.423 Application for the HUD-administered New York Small Cities Grants.

(a) *Proposed application.* The applicant shall prepare and publish a proposed application and comply with citizen participation requirements as described in § 570.431. The applicant should follow the citizen participation requirements of 24 CFR part 91 if it submits a complete consolidated plan.

(b) *Final application.* The applicant shall submit to HUD a final application containing its community development objectives and activities. This final application shall be submitted, in a form prescribed by HUD, to the appropriate HUD office. The application also must contain a priority nonhousing community development plan, in accordance with 24 CFR 91.235.

(c) *Certifications.* (1) Certifications shall be submitted in a form prescribed by HUD. If the application contains any housing activities, the applicant shall certify that the proposed housing activities are consistent with its abbreviated consolidated plan, as described at 24 CFR part 91.

(2) In the absence of evidence (which may, but need not, be derived from performance reviews or other sources) which tends to challenge in a substantial manner the certifications made by the applicant, the certifications will be accepted by HUD. However, if HUD does have available such evidence, HUD may require the submission of additional information or assurances before determining whether an applicant's certifications are satisfactory.

(d) *Thresholds.* The HUD Office may use any information available to it to make the threshold judgments required by the applicable NOFA, including information related to the applicant's performance with respect to any previous assistance under this subpart. The annual performance and evaluation report required under § 570.507(a) is the primary source of this information. The HUD Office may request additional information in cases where it is essential to make the required performance judgments. (Approved by the Office of Management and Budget under control number 2506–0060).

§ 570.424 Grants for imminent threats to public health and safety.

(a) *Criteria.* The following criteria apply for an imminent threat to public health or safety:

(1) The Director of Community Planning and Development of the HUD office may, at any time, invite an application for funds available under this subpart in response to a request for assistance to alleviate an imminent threat to public health or safety that requires immediate resolution. HUD shall verify the urgency and the immediacy of the threat with an appropriate authority other than the applicant prior to acceptance of the application, and the Director of Community Planning and Development of the HUD Office shall review the claim to determine if, in fact, an imminent threat to public health or safety does exist. For example, an applicant with documented cases of disease resulting from a contaminated drinking water supply has an imminent threat to public health, while an applicant ordered to improve the quality of its drinking water supply over the next two years does not have an imminent threat within the definition of paragraph (a) of this section. These funds are to be used to deal with those threats which represent a unique and unusual circumstance, not for the type of threat that occurs with frequency in a number of communities within the State of New York.

(2) The applicant does not have sufficient local resources, and other Federal or State resources are unavailable to alleviate the imminent threat.

(3) All imminent threat projects must meet the requirement of § 570.420(e).

(b) *HUD action.* (1) Fifteen percent of the funds allocated to New York State in the Small Cities Program may be reserved to alleviate imminent threats to the public health or safety unless a lesser amount is specified in a NOFA. Applications shall be submitted in accordance with § 570.423.

(2) Applications which meet the requirements of this section may be approved by the Director of Community Planning and Development of the HUD Office without competition.

(3) The only funds reserved for imminent threats to the public health or safety are those specified by this section

as modified by the NOFA. After the funds have been depleted, HUD shall not consider further requests for grants relating to imminent threats during that fiscal year.

(c) *Letter to proceed.* Notwithstanding § 570.425(a)(3), after a determination has been made that an imminent threat exists, HUD may issue the applicant a letter to proceed to incur costs to alleviate the imminent threat. Reimbursement of such costs is dependent upon HUD approval of the final application.

(d) *Environmental review.* Pursuant to 24 CFR 58.34(a)(10), grants for imminent threats to public health or safety are excluded from some or all of the environmental review requirements of 24 CFR part 58, to the extent provided therein.

§ 570.425 HUD review and actions on applications for New York State applicants.

(a) *Final application submission.* (1) *Submission deadline.* HUD will establish a time period during which final applications must be submitted to the appropriate office. The dates for this period will be published in a notice in the **Federal Register**.

(2) *Incomplete applications.* Applications must contain the information required by HUD. Information relative to the application will not be accepted or considered if received after the submission deadline, unless the information is specifically requested in writing by HUD.

(3) *Pre-agreement costs.* HUD authorizes a unit of general local government to incur costs during a Federal fiscal year in which a grant is made or the prior fiscal year for preparation of a CDBG grant application, planning costs eligible under § 570.205, environmental assessments, and project engineering and design costs for eligible activities under §§ 570.201 through 570.204 before the establishment of a formal grant relationship between the applicant and HUD. Costs of such activities for the funded application may be charged to the grant should it be funded, provided that the activities are undertaken in accordance with the requirements of this subpart, and 24 CFR part 58. It is understood that the incurring of costs described in this paragraph creates no obligation on HUD to approve the application.

(b) *HUD action on final application.* (1) *Review and notification.* Following the review of the applications, HUD will promptly notify each applicant of the action taken with regard to its application. Documentation which supports HUD's decisions on applications will be available to the public.

(2) *Conditional approval.* HUD may make a conditional approval, in which case the grant will be approved but the obligation and utilization of funds will be restricted. The reasons for the conditional approval and the actions necessary to remove the condition will be specified. Failure to satisfy the condition may result in a termination of the grant.

(3) HUD will not make a Small Cities grant when it is determined that the grant will only have a minimal or insignificant impact on the grantee.

(4) *Individual grant amounts.* In determining appropriate grant amounts to be awarded, HUD may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives and the administrative capacity of the applicant to complete the activities in a timely manner.

(c) *Streamlined application requirement for previous applicants.* HUD may provide pursuant to a NOFA that if an applicant notifies HUD in writing within the application period specified in a NOFA that it wishes to be so considered, HUD will consider unfunded applications from the prior round or competition that meet the threshold requirements of the NOFA. The applicant will have the option of withdrawing its application, or amending or supplementing the application for succeeding rounds of competition. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for succeeding rounds of competition. Applicants availing themselves of the option to have an application from the previous round or competition reconsidered by HUD must submit a new abbreviated or full consolidated plan, if the new competitive funding round is in a different fiscal year than the funding round or competition for which the application was originally submitted.

§ 570.426 Program income.

(a) The provisions of § 570.504(b) apply to all program income generated by a specific grant and received prior to grant closeout.

(b) If the unit of general local government has another ongoing CDBG grant at the time of closeout, the program income will be considered to be program income of the ongoing grant. The grantee can choose which grant to credit the program income to if it has multiple open CDBG grants.

(c) If the unit of general local government has no open ongoing CDBG grant at the time of closeout, program income of the unit of general local government or its subrecipients which amounts to less than $25,000 per year will not be considered to be program income. When more than $25,000 of program income is generated from one or more closed out grants in a year after closeout, the entire amount of the program income is subject to the requirements of this part. This will be a subject of the closeout agreement described in § 570.509(c).

§ 570.427 Program amendments.

(a) *HUD approval of certain program amendments.* Grantees shall request prior HUD approval for all program amendments involving new activities or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activities or beneficiaries. Approval is subject to the following:

(1) Programs or projects that include new or significantly altered activities are rated in accordance with the criteria for selection applicable at the time the original preapplication or application (whichever is applicable) was rated. The rating of the program or projects proposed which include the new or altered activities proposed by the amendment must be equal to or greater than the lowest rating received by a funded project or program during that cycle of ratings.

(2) Consideration shall be given to whether any new activity proposed can be completed promptly.

(3) If the grant was received on a noncompetitive basis, the proposed amended project must be able to be completed promptly, and must meet all of the threshold requirements that were required for the original project. If the proposal is to amend the project to a type of project that was rated competitively in the fiscal year that the noncompetitive project was funded, the new or altered activities proposed by the amendment must receive a rating equal to or greater than the lowest rating received by a funded project or program during that cycle of ratings.

(b) *Documentation of program amendments.* Any program amendments that do not require HUD approval must be fully documented in the grantee's records.

(c) *Citizen participation requirements.* Whenever an amendment requires HUD approval, the requirements for citizen participation in § 570.431 must be met.

§ 570.428 Reallocated funds.

(a) *General.* This section governs reallocated funds originally allocated for use under 24 CFR part 570, subpart F (Small Cities Program).

(b) *Assignment of funds to be reallocated.* Reallocated funds may be:

(1) Used at any time necessary for a section 108 repayment grant under § 570.432;

(2) Added to the next Small Cities Program competition;

(3) Used to fund any application not selected for funding in the most recent Small Cities competition, because of a procedural error made by HUD; or

(4) Used to fund the most highly ranked unfunded application or applications from the most recent Small Cities Program competition.

(c) *Timing.* Funds which become available shall be used as soon as practicable.

§ 570.429 Hawaii general and grant requirements.

(a) *General.* This section applies to the HUD-administered Small Cities Program in the State of Hawaii.

(b) *Scope and applicability.* Except as otherwise provided in this section, the policies and procedures outlined in subparts A, C, J, K, O of this part, and in §§ 570.420, 570.430, and 570.432, apply to the HUD-administered Small Cities Program in the State of Hawaii.

(c) *Grant amounts.* (1) For each eligible unit of general local government, a formula grant amount will be determined which bears the same ratio to the total amount available for the nonentitlement area of the State as the weighted average of the ratios between:

(i) The population of that eligible unit of general local government and the population of all eligible units of general local government in the nonentitlement areas of the State;

(ii) The extent of poverty in that eligible unit of general local government and the extent of poverty in all the eligible units of general local government in the nonentitlement areas of the State; and

(iii) The extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all the eligible units of general local government in the nonentitlement areas of the State.

(2) In determining the average of the ratios under this paragraph (c), the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once. (0.25+0.50+0.25=1.00).

(d) *Adjustments to grants.* Grant amounts under this section may be adjusted where an applicant's performance is judged inadequate, considering:

(1) Capacity to utilize the grant amount effectively and efficiently;

(2) Compliance with the requirements of § 570.902(a) for timely expenditure of funds beginning with grants made in FY 1996. In making this calculation, all outstanding grants will be considered. For the FY 1995 grant the requirement is substantial compliance with the applicant's schedule or schedules submitted in each previously funded application;

(3) Compliance with other program requirements based on monitoring visits and audits.

(e) *Reallocation.* (1) Any amounts that become available as a result of adjustments under paragraph (d) of this section, or any reductions under subpart O of this part, shall be reallocated in the same fiscal year to any remaining eligible applicants on a pro rata basis.

(2) Any formula grant amounts reserved for an applicant that chooses not to submit an application shall be reallocated to any remaining eligible applicants on a pro rata basis.

(3) No amounts shall be reallocated under paragraph (e) of this section in any fiscal year to any applicant whose grant amount was adjusted under paragraph (d) of this section or reduced under subpart O of this part.

(f) *Required submissions.* In order to receive its formula grant under this subpart, the applicant must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(g) *Application approval.* HUD will approve an application if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91 and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to subpart O of this part that the grantee has not complied with the requirements of this part, has failed to carry out its consolidated plan as provided under § 570.903, or has determined that there is evidence, not directly involving the grantee's past performance under this program, that tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

(h) *Grant agreement.* The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(i) *Conditional grant.* The Secretary may make a conditional grant in which case the obligation and use of grant funds for activities may be restricted. Conditional grants may be made where there is substantial evidence that there has been, or there will be, a failure to meet the performance requirements or criteria described in subpart O of this part. In such case, the conditional grant will be made by means of a grant agreement, executed by HUD, which includes the terms of the condition specifying the reason for the conditional grant, the actions necessary to remove the condition and the deadline for taking those actions. The grantee shall execute and return such an agreement to HUD within 60 days of the date of its transmittal. Failure of the grantee to execute and return the grant agreement within 60 days may be deemed by HUD to constitute rejection of the grant by the grantee and shall be cause for HUD to determine that the funds provided in the grant agreement are available for reallocation in accordance with section 106(c) of the Act. Failure to satisfy the condition may result in a reduction in the grant amount pursuant to § 570.911. (Approved by the Office of Management and Budget under control number 2506–0060)

§ 570.430 Hawaii program operation requirements.

(a) *Limitation on planning and administrative costs.* For grants made with allocations prior to FY 1995, no more than 20 percent of the sum of the grant plus program income received during the grant period shall be expended for planning and program administrative costs. For grants received from allocations in FY 1995 and thereafter, a grantee will be considered to be in conformance with the requirements of § 570.200(g) if expenditures for planning and administration during the most recently completed program year do not exceed 20 percent of the sum of the grant made for that program year and the program income received from post FY 1994 grants during that program year.

(b) *Performance and evaluation reports.* Grantees will follow the requirements of § 570.507(a) for entitlement grant recipients for all grants received in FY 1995 and thereafter. Grantees will continue following the requirements of § 570.507(a) for HUD-administered small cities grants for grants received prior to FY 1995 until those grants are closed out.

(c) *Grant closeouts.* Grants received prior to FY 1995 shall be closed out in accordance with the procedures in § 570.509. Grants received in FY 1995 and thereafter shall not be closed out individually. A grantee's entire program shall be closed upon program completion if a grantee ceases its participation in the Small Cities Program.

(d) *Public Services.* Starting with the FY 1996 grant, grantees may follow the provisions of § 570.201(e)(1) that refer to entitlement grantees, allowing grantees to use 15 percent of the program income received in the previous program year in addition to 15 percent of the grant amount for public services.

(e) *Compliance with the primary objective.* Starting with the FY 1995 grant, grantees may select a time period of one, two or three program years in which to meet the requirement that not less than 70 percent of the aggregate of CDBG fund expenditures be for activities benefitting low-and moderate-income persons. Grants made from allocations prior to FY 1995 will be considered individually for meeting the primary objective, and expenditures for grants from pre-FY 1995 allocations made during and after FY 1995 will not be considered in determining whether the primary objective has been met for post-1994 allocations. If the State of Hawaii decides to administer the Community Development Block Grant Program for nonentitlement units of general local government in Hawaii, the State will be bound by the time period for meeting the primary objective that was chosen by each nonentitlement grantee within the State until those time periods have expired.

(f) *Program amendments for grants received prior to FY 1995.* Grantees must follow the requirements of § 91.505 of this title when amending their program with regard to grants received prior to FY 1995. For purposes of this paragraph (f), the term ''*consolidated plan*'' as used in § 91.505 of this title means an application submitted under the Hawaii program for pre-FY 1995 funds. Also for purposes of this paragraph (f), to comply with the requirements of § 91.505 of this title, grantees must refer to their current citizen participation plans (adopted in accordance with § 91.505 of this title) to determine the criteria for substantial amendment and the citizen participation process to be followed. (Approved by the Office of Management and Budget under control number 2506–0020.)

§ 570.431 Citizen participation.

(a) *General.* An applicant that is located in a nonentitlement area of a State that has not elected to distribute funds shall comply with the citizen participation requirements described in this section, including requirements for the preparation of the proposed application and the final application. The requirements for citizen participation do not restrict the responsibility or authority of the applicant for the development and execution of its community development program.

(b) *Citizen participation plan.* The applicant must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the application for assistance is submitted to HUD, and the applicant must certify that it is following the plan. The plan must set forth the applicant's policies and procedures for:

(1) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

(i) The amount of CDBG funds expected to be made available for the coming year, including the grant and anticipated program income;

(ii) The range of activities that may be undertaken with those funds;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low and moderate income persons;

(iv) The proposed CDBG activities likely to result in displacement and the applicant's plans, consistent with the policies developed under § 570.606(b), for minimizing displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the applicant plans to make available (or to require others to make available) to persons displaced by CDBG-funded activities, even if the applicant expects no displacement to occur;

(2) Providing technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the applicant. The assistance need not include the provision of funds to the groups;

(3) Holding a minimum of two public hearings, for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program. Together, the hearings must address community development and housing needs, development of proposed activities and review of program performance. There must be reasonable notice of the hearings and the hearings must be held at times and accessible locations convenient to potential or actual beneficiaries, with reasonable accommodations including material in accessible formats for persons with disabilities. The applicant must specify in its plan how it will meet the requirement for hearings at times and locations convenient to potential or actual beneficiaries;

(4) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate;

(5) Responding to citizen complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The applicant's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable; and

(6) Encouraging citizen participation, particularly by low-and moderate-income persons who reside in slum or blighted areas, and in other areas in which CDBG funds are proposed to be used.

(c) *Publication of proposed application.* The applicant shall publish a proposed application consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

(1) Examine the application's contents to determine the degree to which they may be affected;

(2) Submit comments on the proposed application; and

(3) Submit comments on the performance of the applicant.

(4) The requirement for publishing may be met by publishing a summary of the proposed application in one or more newspapers of general circulation, and by making copies of the proposed application available at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed

application, and must include a list of the locations where copies of the entire proposed application may be examined.

(d) *Preparation of a final application.* An applicant must prepare a final application. In the preparation of the final application, the applicant shall consider comments and views received related to the proposed application and may, if appropriate, modify the final application. The final application shall be made available to the public and shall include the community development objectives and projected use of funds, and the community development activities.

(e) *New York grantee amendments.* To assure citizen participation on program amendments to final applications that require HUD approval under § 570.427, the grantee shall:

(1) Furnish citizens information concerning the amendment;

(2) Hold one or more public hearings to obtain the views of citizens on the proposed amendment;

(3) Develop and publish the proposed amendment in such a manner as to afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment;

(4) Consider any comments and views expressed by citizens on the proposed amendment and, if the grantee finds it appropriate, modify the final amendment accordingly; and

(5) Make the final amendment to the community development program available to the public before its submission to HUD.

§ 570.432 Repayment of section 108 loans.

Notwithstanding any other provision of this subpart, a unit of general local government in a nonentitlement area where the State has not elected to administer the CDBG program shall be eligible for Small Cities Grant assistance hereunder for the sole purpose of paying any amounts due on debt obligations issued by such unit of general local government (or its designated public agency) and guaranteed by the Secretary pursuant to section 108 of the Act (see subpart M of this part). The award of grant assistance for such purpose shall be consistent with section 106(d)(3)(B) of the Act, in such amount, and subject to such conditions as the Secretary may determine. Since guaranteed loan funds (as defined in § 570.701) are required to be used in accordance with national and primary objective requirements, and other applicable requirements of this part, any grant made to make payments on the debt obligations evidencing the guaranteed loan shall be presumed to meet such requirements, unless HUD determines that the guaranteed loan funds were not used in accordance with such requirements. Any such determination by HUD shall not prevent the making of the grant in the amount of the payment due, but it may be grounds for HUD to take appropriate action under subpart O based on the original noncompliance.

Dated: May 12, 1997.

Jacquie Lawing,

General Deputy Assistant, Secretary for Community Planning and Development.

[FR Doc. 97–15223 Filed 6–10–97; 8:45 am]

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federal register

Wednesday
June 11, 1997

Part IV

Department of Housing and Urban Development

24 CFR Part 585

Opportunities for Youth: Youthbuild Program Further Streamlining; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 585

[Docket No. FR–4226–F–01]

RIN No. 2506–AB93

Opportunities for Youth: Youthbuild Program Further Streamlining;

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes a streamlining amendment to 24 CFR part 585 by removing subpart B regarding the application and grant award process. This information is set forth in the Notices of Funding Availability issued by HUD when funding is made available for the Youthbuild Program, and need not be codified.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: The Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708–2035; TTY (202) 708–1455. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

Section 164 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) amended title IV of the National Affordable Housing Act (42 U.S.C. 1437aaa) to add a new subtitle D which established the Youthbuild program (the ''Youthbuild statute''). On February 21, 1995, the Department published a final rule at 60 FR 9734, which is codified at 24 CFR part 585. Part 585 was streamlined by a final rule published on October 4, 1996, at 61 FR 52186.

This Rule

President Clinton's memorandum of March 4, 1995, titled ''Regulatory Reinvention Initiative'' directed heads of Federal departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. As a part of HUD's overall effort to reduce regulatory burden and streamline the content of title 24 of the Code of Federal Regulations, this rule removes those provisions which are unnecessary to be codified and can be made available through other non-rulemaking means.

It is unnecessary to maintain the provisions of subpart B of the Youthbuild regulations in the Code of Federal Regulations (CFR). Subpart B pertains to the application and grant award process. Certain provisions in subpart B (specifically, §§ 585.100 through 585.107) simply repeat the requirements of the Department of Housing and Urban Development Reform Act (Pub. L. 101–235, approved December 15, 1989) (HUD Reform Act) (see 42 U.S.C. 3545), now codified in 24 CFR part 4. (The HUD Reform Act regulations previously were codified in 24 CFR parts 4 and 12, but were consolidated in part 4 by final rule published on April 1, 1996, 61 FR 1449). The requirements of the HUD Reform Act and of its regulations apply to Youthbuild funding competitively awarded, notwithstanding any reference to these requirements in the Youthbuild Program regulations.

Other provisions in subpart B repeated the statutory requirements governing the application and grant award process set out in the Youthbuild statute. As with the HUD Reform Act requirements, these statutory requirements are applicable whether or not set out in the regulation.

Since the statutory and regulatory requirements governing the application and grant award process are announced in the Notices of Funding Availability, it is not necessary that they be set out in the regulations. Furthermore, removal of these procedures from the CFR increases the flexibility of the procedures as warranted by circumstances surrounding the individual funding cycles. Accordingly, this final rule removes and reserves subpart B.

Justification for Final Rule on Streamlining Provisions

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment on the streamlining provision. The streamlining provision merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(1), published in the **Federal Register** on September 27, 1996 (61 FR 40914), this final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction. This rule merely streamlines the Youthbuild Program regulations by removing unnecessary provisions. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 and the related Federal authorities in 24 CFR 50.4.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule merely makes nonsubstantive streamlining amendments to part 585.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have ''federalism implications'' because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.243.

List of Subjects in 24 CFR Part 585

Grant programs—housing and community development, Homeless, Low and very low-income families,

Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, part 585 of title 24 of the Code of Federal Regulations is amended as follows:

PART 585—YOUTHBUILD PROGRAM

1. The authority citation for part 585 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12899.

Subpart B—[Removed and Reserved]

2. Subpart B, consisting of §§ 585.100 through 585.107, is removed and reserved.

Dated: May 19, 1997.

Jacquie M. Lawing,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 97–15221 Filed 6–10–97; 8:45 am]

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federal register

Wednesday
June 11, 1997

Part V

Department of Commerce

International Trade Administration

Preliminary Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from Ukraine; Notice

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Certain Cut-to-Length Carbon Steel Plate from South Africa; Notice

Preliminary Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from the Russian Federation; Notice

Preliminary Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Preliminary Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Eugenia Chu, or Yury Beyzarov, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0193, (202) 482–3964, or (202) 482–2243, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as codified at 19 CFR part 353 (April 1, 1996).

Preliminary Determination

We determine preliminarily that certain cut-to-length carbon steel plate from Ukraine is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (61 FR 64051, December 3, 1996), the following events have occurred:

On December 19, 1996, the United States International Trade Commission (ITC) issued an affirmative preliminary determination in this case (see ITC Investigations Nos. 731–TA–753–756). The ITC found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Ukraine of certain cut-to-length carbon steel plate.

The Department issued its antidumping questionnaires to the Embassy of Ukraine on December 20, 1996, and requested the Embassy to forward the documents to all Ukrainian producers/exporters of certain cut-to-length carbon steel plate, as well as to manufacturers who produced the subject merchandise for companies who were engaged in exporting subject merchandise to the United States during the period of investigation. We requested the Embassy to inform these companies that they must respond by the due dates. We also sent courtesy copies to the companies whose names and complete addresses had been identified in the petition.

On January 10, 1997, the Department conducted a questionnaire presentation in Kiev, Ukraine. Attending the presentation were officials from the Ukrainian Ministry of Foreign Economic Relations, the Ministry of Industry, and potential producers/exporters of carbon steel plate.

Also on January 10, 1997, Geneva Steel Company and Gulf States Steel Company (petitioners), alleged that critical circumstances exist with respect to imports of certain cut-to-length carbon steel plate from Ukraine. This issue is addressed in the ''Preliminary Determination of Critical Circumstances'' section of this notice.

On February 6, 1997, the Department provided interested parties with the opportunity to submit published, publicly available information for the Department to consider when valuing the factors of production and for surrogate country selection. We received comments from interested parties on February 27, 1997.

In February and March 1997, three Ukrainian companies submitted responses to sections A, C, and D of the questionnaire. These companies are: (1) Alchevsk Iron and Steel Works (Alchevsk); (2) Azovstal Iron and Steel Works (Azovstal); and (3) Ilyich Iron and Steel Works (Ilyich). All three are Ukrainian producers/exporters of subject merchandise. We issued supplemental questionnaires to these respondent companies on March 7, 1997.

After receiving complete questionnaire responses from the three Ukrainian companies on April 4, 7, and 11, 1997, we determined that one of the responding companies, Alchevsk, did not sell subject merchandise to the United States during the POI. Therefore, since Alchevsk is not a respondent, we need not reach the issue of whether it is entitled to a separate rate. For more details, see Treatment of Sales Outside the POI Memorandum, dated May 30, 1997.

Both Azovstal and Ilyich reported that they sold all subject merchandise through trading companies. In light of this fact, the Department concluded that clarification was required as to whether these resellers sold additional subject merchandise (unreported by the respondents) to the United States. Therefore, in March 1997, we also issued trading company questionnaires to respondents' resellers. We received responses in March and April 1997. These responses supported the information submitted by Azovstal and Ilyich regarding their total quantity of sales made to the United States through the trading companies.

Also on March 25, 1997, in response to the Ukrainian government's comments, dated February 13, 1997, on Ukraine's nonmarket economy (NME) status, the Department issued the Ukrainian government a questionnaire to clarify whether Ukraine's NME status should be revoked. We received these responses on May 1, 1997. This issue is addressed in the ''Nonmarket Economy Country Status'' section of this notice.

Except for the companies identified above, none of the other companies served with a questionnaire responded to the Department's original questionnaire.

On April 15, 1997, petitioners submitted a request that the scope of their petitions be amended to include three items—plate in coil; plate made to carbon plate specifications regardless of alloy content; and plate sold to nominal plate thicknesses whose actual thickness is slightly less than the thickness of plate but within specified thickness tolerances. With respect to plate in coil, petitioners maintain that this product has essentially the same physical characteristics and end uses as cut-to-length plate. Petitioners further claim that a post-initiation shift has occurred in the pattern of trade from cut-to-length plate to plate in coil form, and that such a development indicates that any eventual order on cut-to-length plate will be susceptible to circumvention. Petitioners submitted additional information on May 9, 1997. Respondents submitted extensive rebuttal comments on April 25, 1997, and May 30, 1997.

Because of the very recent submission of arguments on these complex and technical subjects, we were unable to fully analyze all of the relevant information on the record prior to this preliminary determination. In order to fully examine petitioners' claims, we intend to carefully examine all evidence and argument on the record regarding this matter and issue a decision as soon as possible.

On April 30, 1997 (62 FR 23433) we further postponed the preliminary determination until not later than June 3, 1997.

Scope of the Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1996 through September 30, 1996.

Nonmarket Economy Country Status

The Department has treated Ukraine as a nonmarket economy country (NME) in all past antidumping investigations and administrative reviews (see, e.g., Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Kazakhstan and Ukraine, 58 FR 13050 (March 9, 1993); Final Determination of Sales at Less Than Fair Value: Silicomanganese From Ukraine, 59 FR 62711 (December 6, 1994); and Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine, 60 FR 16432 (March 30, 1995)). A designation as an NME remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act). The Government of Ukraine has requested that the Department examine Ukraine's designation as an NME in this investigation. The Department is currently reviewing all information submitted by the Ukrainian government and will take into consideration the comments of all interested parties. However, for this preliminary determination, the Department will continue to treat Ukraine as an NME.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c) of the Act directs the Department in most circumstances to base normal value (NV) on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are comparable in terms of economic development to the NME country and are significant producers of comparable merchandise. The sources of individual factor prices are discussed under the NV section below.

The Department has determined that Tunisia, Peru, Poland, Venezuela, Brazil, South Africa, and Turkey are countries comparable to Ukraine in terms of overall economic development. See Policy Memorandum, dated January 29, 1997.

According to the available information on the record, we have determined that Brazil is an appropriate surrogate because it is at a comparable level of economic development and is a significant producer of comparable merchandise. Furthermore, there is a wide array of publicly available information for Brazil. Accordingly, we have calculated NV using Brazilian prices to value the Ukrainian producers' factors of production, when available and where appropriate. We have obtained and relied upon publicly available information wherever possible.

Separate Rates

The Department presumes that a single dumping margin is appropriate for all exporters in a non-market economy country. The Department may, however, consider requests for a separate rate from an individual exporter. See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994). Each of the participating respondent exporters has requested a separate, company-specific rate. During the POI, both Azovstal and Ilyich were owned by leaseholders' organizations.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers). Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both de jure and de facto governmental control over export activities. For a complete analysis of separate rates, see Separate Rates Memorandum, dated June 3, 1997.

1. Absence of De Jure Control

An individual company may be considered for separates rates if it meets the following de jure criteria: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. The respondents have placed on the administrative record a number of submissions to demonstrate absence of de jure control. These documents include laws, regulations, and provisions enacted by the central government of Ukraine, which demonstrate a significant degree of deregulation of Ukrainian business activity, as well as deregulation of Ukrainian export activity.

Broadly speaking, the evidence on the record indicates that the Government of Ukraine has instituted wide-ranging legal reforms toward about a more market-based economy. To do so, the government has attempted to devolve *de jure* governmental control over some state-owned enterprises through the privatization process and most business activities of non-state-owned enterprises. Because the government has now created a right of ownership of business enterprises for private persons and collectives, leaseholding societies, such as Azovstal and Ilyich, formerly state-owned and operated, are now

distinct legal entities. In general, this ownership right allows non-state-owned business enterprises to freely engage in economic activity, negotiate and sign contracts, and independently develop business plans. Collectives, like the leaseholding societies of Azovstal and Ilyich, can independently select management through elections by the workers collective and can exercise control and direction over the general director through a contract between the enterprise and the general director. Enterprises can have their own bank account, and, after taxes, it appears that non-state-owned enterprises can keep the profits from their sales, and engage in foreign economic activity, generally, without government interference. Although certain categories of goods are subject to mandatory export controls, including registration of export contracts and obligatory minimum prices, respondents' shipments of subject merchandise to the United States during the POI were not subject to mandatory pricing. Although the companies indicated they must register their export contracts, it appears to have been more geared to monitoring/statistical purposes.

2. Absence of De Facto Control

The Department considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices (''EP'') are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Each respondent exporter has asserted, and supported on the record, the following: (1) It sets its own export prices; (2) it negotiates contracts without guidance from any governmental bodies; (3) it makes its own personnel decisions with regard to selection of management through elections by the members of the leaseholding societies, and the General Director and his appointed Deputies have authority to negotiate and enter into contracts on behalf of the enterprise; and (4) it has separate bank accounts and retains the proceeds of its export sales (although 50 percent of foreign currency earnings must be converted into Ukrainian currency), uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters.

Thus, it appears that in fact the operation of these laws did provide Azovstal and Ilyich the ability to protect their rights to autonomy in regard to the actual negotiation of export prices, retention and disposition of profits, selection of management and setting of labor rates, and negotiation of contracts, including export contracts. This information supports a preliminary finding that there is a de facto absence of governmental control of the export functions of these companies.

Consequently, we determine preliminarily that both of the participating producers/exporters meet the criteria for application of separate rates.

Ukraine-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of certain cut-to-length carbon steel plate from Ukraine is greater than the total quantity and value of steel plate reported by all Ukrainian companies that submitted responses. Given this discrepancy, we conclude that not all exporters of Ukrainian certain cut-to-length carbon steel plate responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the Ukraine-wide rate—to all exporters in Ukraine (other than the two named above as receiving separate rates), based on our presumption that those respondents who failed to respond constitute a single enterprise, and are under common control by the Ukraine government. See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026 (April 30, 1996).

This Ukraine-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including the information drawn from the petition.

As discussed above, all Ukrainian exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. In such situations, the Department generally selects as total facts available either the higher of the average of the margin from the petition or the highest rate calculated for a respondent in the proceeding. In the present case, the average margin in the petition is higher than the calculated rate. Accordingly, the Department has based the Ukraine-wide rate on information in the petition. In this case, the average petition rate is 237.91 percent.

Section 776(c) of the Act provides that where the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonable at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA clarifies that the petition is ''secondary information'' and that ''corroborate'' means to determine that the information used has probative value. See SAA at 870.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The information contained in the petition shows that petitioners calculated export price based on two methods: (1) The import values declared to the U.S. Customs Service; and (2) an average export price derived from actual U.S. selling prices known to petitioners. We compared the starting prices used by petitioners less the importer mark-ups against prices derived from U.S. import statistics and found that the two sets of prices were consistent. We also compared the movement charges used in the petition with the surrogate values used by the Department in its margin calculations and found them to be consistent.

The information in the petition with respect to the normal value (NV) is based on factors of production used by the petitioners in the production of steel plate. Petitioners submitted usage amounts for materials, labor and energy, adjusted for known differences in production efficiencies. Petitioners submitted three cost models in the petition: (1) Basic Oxygen Furnace (BOF) Cost Model; (2) Open-Hearth Furnace Cost Model; and (3) Weighted Average Normal Value of the BOF and Open-Hearth methods to account for differences between the production processes of petitioners and potential respondents.

The margins in the petition ranged from 201.61 to 274.82 percent obtained by comparing the normal values to the export price developed from customs values and to export prices developed from actual U.S. price quotes. For each method, petitioners submitted estimated dumping margins for the BOF method, the open-hearth method and a weighted average of the two. See Corroboration Memorandum, dated June 3, 1997.

Fair Value Comparisons

To determine whether certain cut-to-length carbon steel plate from Ukraine sold to the United States by the Ukrainian exporters receiving separate rates was made at less than fair value, we compared the EP to the NV, as specified in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

For both Azovstal and Ilyich, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the product-specific average normal value.

We made company-specific adjustments as follows:

1. Azovstal

We calculated EP based on packed, FOB or CPT prices to the port of loading on Ukrainian territory. We made deductions from the starting price, where appropriate, for brokerage and handling. However, because these services were provided by the Ukrainian port facility, these services were assigned a surrogate value where available from publicly available published data from Brazil, the surrogate country which we are using to value factors of production. *See* Factors Memorandum, dated June 3, 1997.

2. Ilyich

We calculated EP based on packed, FOB prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for brokerage and handling. However, because these services were provided by the Ukrainian port facility, these services were assigned a surrogate value where available from Brazilian publicly available published data.

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the factories in the Ukraine which produced the carbon steel plate sold by the two respondents. We valued all the input factors using publicly available information as discussed in the Surrogate Country section of this notice.

Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices in the surrogate country. Where we were not able to rely on domestic prices, we used import prices to value factors. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices or, in the case of labor rates, consumer price indices, published in the International Monetary Fund's International Financial Statistics. For a complete analysis of surrogate values, *see* Factors Memorandum, dated June 3, 1997.

To value coal, coke, anthracite, ferro alloys, aluminum, pellets, ferro-manganese, lime, black oil, and scrap (not all materials were used for both companies) we used public information from the latest data published by the United Nations for 1996 (Commodity Trade Statistics 1994, 3 Brazil Rev. 1995, at 19). For iron, we used information in a 1996 Brazilian publication, Siderurigia no Mundo. For manganese ore, we relied on public information from the financial statements of Usinas Sidergicas de Minas Gerais S. and Compania Siderurgica de Tubarao, two Brazilian steel companies. For limestone, we used information from Commodity Trade Statistics 1993, Brazil Rev. 3, United Nations, 1994.

For natural gas, we relied on public information reported in the Brazilian publication of Diario Oficial No. 180, September 27, 1995. For electricity, we relied upon public information from Revista Energetica, Year 19, No. 1, Jan-Apr 1995.

To value skilled labor, we used the County Reports on Human Rights Practices for 1996, from the U.S. Department of State. For unskilled labor, we relied on data documented for unskilled labor obtained from a U.S. Department of Commerce cable dated October 1994. To value overhead, SG&A, and profit, we relied on financial statements of Usinas Sidergicas de Minas Gerais S. and Compania Siderurgica de Tubarao, two Brazilian steel companies. To value brokerage, we relied on public data from Case No. A–351–817, Cut-to-Length Plate from Brazil, Usiminas, Section C Response at Exh. 6, dated November 21, 1996.

Preliminary Determination of Critical Circumstances

On January 10, 1997, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of certain cut-to-length carbon steel plate. In accordance with 19 C.F.R. 353.16(b)(2)(i) (1996), since these allegations were filed earlier than the deadline for the Department's preliminary determination, we must issue our preliminary critical circumstances determinations not later than the preliminary determination.

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

The statute and the Statement of Administrative Action which accompanies the Uruguay Round Agreements Act (SAA) are silent as to how we are to make a finding that there was knowledge that there was likely to be material injury. Therefore, Congress has left the method of implementing this provision to the Department's discretion.

In determining whether there is a reasonable basis to believe or suspect

that an importer knew or should have known that the exporter was selling the plate at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. *See, e.g.,* Preliminary Critical Circumstances Determination: Honey from the People's Republic of China (PRC), 60 FR 29824 (June 6, 1995) (*Honey*). Since the company specific margins for EP sales in our preliminary determination for carbon steel plate are greater than 25 percent for Azovstal and Ilyich, we have imputed knowledge of dumping.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports during the critical circumstances period—the 90-day period beginning with the initiation of the investigation (see 19 CFR 353.16(g)). If, as in this case, the ITC preliminarily finds threat of material injury (See Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine, U.S. International Trade Commission, December 1996), the Department will also consider the extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period and the magnitude of the margins in determining whether a reasonable basis exists to impute knowledge that material injury was likely.

In this case, imports of Ukrainian plate increased 45 percent in the three months following the initiation of the investigation when compared to the three months immediately preceding initiation, or three times the level of increase needed to find ''massive imports'' during the same period (see below). Furthermore, we have preliminarily found margins of 99.59 percent for Azovstal and 176.76 percent for Ilyich.

Based on the ITC's preliminary determination of threat of injury, the increase in imports noted above, and the high preliminary margins, the Department determines that there is a reasonable basis to believe or suspect that the importer knew or should have known that there was likely to be material injury by means of sales of the subject merchandise at less than fair value.

To determine whether imports were massive over a relatively short time period, the Department typically compares the import volume of the subject merchandise for the three months immediately preceding and following the initiation of the proceeding. See 19 CFR 353.16(g). Pursuant to 19 CFR 353.16(f)(2), the Department will consider an increase of 15 percent or more in the imports of the subject merchandise over the relevant period to be massive.

As noted, imports of the subject merchandise increased 45 percent during the relevant period, and thus we determine that imports have been massive.

Thus, because we determine that there is a reasonable basis to believe or suspect that the importer knew or should have known that Ukrainian exporters were selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and that there have been massive imports of the subject merchandise over a relatively short time period, we preliminarily determine that critical circumstances exist for Avostal and Ilyich.

For companies subject to the Ukraine-wide rate (i.e., companies which did not respond to the Department's questionnaire), we are imputing knowledge based on the Ukraine-wide rate, and determine, based on facts available, that there were massive imports of certain cut-to-length carbon steel plate by companies that did not respond to the Department's questionnaire. Therefore, we preliminarily determine that critical circumstances exist with regard to these companies.

We find that critical circumstances exist for cut-to-length carbon steel plate sales by all Ukrainian exporters.

Verification

As provided in section 782(i) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject from Ukraine, that are entered, or withdrawn from warehouse, for consumption on or after the date ninety days prior to the date of publication of this notice in the **Federal Register**. We will instruct Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP, as indicated below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Azovstal	99.59
Ilyich	176.76
Ukraine-wide rate	237.91

Ukraine-Wide Rate

A Ukraine-wide rate has been assigned to certain cut-to-length carbon steel plate based on the average margin contained in the petition, as amended by the Department. The Ukraine-wide rate applies to all entries of subject merchandise except for entries from exporters/producers that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reasons of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

In accordance with 19 CFR 353.38 (1996), case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the publication of this preliminary determination, and rebuttal briefs, no later than five days after the filing of case briefs. A list of authorities used and a summary of arguments made in the briefs should accompany these briefs. Such summary should be limited to five pages total, including footnotes. We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, time, date, and room to be determined. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b)(1996), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by August 18, 1997.

This determination is published pursuant to section 777(i) of the Act.

Dated: June 3, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–15291 Filed 6–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–794–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Certain Cut-to-Length Carbon Steel Plate from South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value and postponement of final determination.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Rast, or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5811, or (202) 482–0196, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are in reference to the regulations, codified at 19 CFR part 353, as they existed on April 1, 1996.

Preliminary Determination

We determine preliminarily that certain cut-to-length carbon steel plate from South Africa is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (61 FR 64051, December 3, 1996), the following events have occurred:

On December 19, 1996, the United States International Trade Commission (ITC) issued an affirmative preliminary determination in this case (see ITC Investigations Nos. 731–TA–753–756). The ITC found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from South Africa of certain cut-to-length carbon steel plate.

On December 20, 1996, the Department issued its antidumping questionnaires to the following companies identified by petitioners as possible exporters of the subject merchandise: Iscor Limited (Iscor) and Highveld Steel and Vanadium Corporation Limited (Highveld). The questionnaire is divided into four sections. Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively. Section D requests information on the cost of production (COP) of the foreign like product and constructed value (CV) of the subject merchandise.

The Department conducted questionnaire presentations at Iscor on January 21–22, 1997, and at Highveld on January 23–24, 1997.

In February 1997, Iscor and Highveld submitted responses to sections A, B, and C of the questionnaire. We issued supplemental questionnaires to the respondents in March 1997, and received supplemental questionnaire responses from both companies in April 1997.

On February 12, 1997, Highveld requested that the Department use actual unadjusted daily exchange rates when performing currency conversions because of depreciation of the South African rand relative to the U.S. dollar during the POI. Petitioners objected to Highveld's request on February 24, 1997, arguing that Highveld failed to demonstrate that proper grounds exist for the Department to consider the fluctuation in the rand during the POI. On March 5, 1997, Highveld responded to petitioners' rebuttal. (*See* currency conversion section below.)

On March 28, 1997, we postponed the preliminary determination until not later than May 14, 1997 (62 FR 14887), because we determined this investigation to be extraordinarily complicated within the meaning of section 733(c)(1)(B) of the Act.

On March 31, 1997, petitioners alleged that both Highveld and Iscor had made sales in the home market at prices that were below the cost of production (COP), pursuant to section 773(b) of the Act. On April 9, 1997, the Department requested that petitioners provide additional information regarding their allegation on Iscor. The petitioners supplied the requested supplemental information on April 11, 1997. After analyzing petitioners' allegations, the Department determined that there were reasonable grounds to believe or suspect that Highveld and Iscor had made home market sales at prices below the cost of production. On May 1, 1997, the Department initiated a COP investigation of Highveld. On May 7, 1997, the Department initiated a COP investigation of Iscor. (*See* memorandum from Linda Ludwig to Richard O. Weible dated May 1, 1997, and May 7, 1997, respectively, on file in the Central Records Unit, Room B–099 of the Department of Commerce.)

As a result of the Department's initiation of cost of production investigations, the Department requested, on May 1, 1997 and May 7, 1997, respectively, that Highveld and Iscor answer Section D of the original questionnaire. The Department extended Highveld's and Iscor's time to respond to Section D of the questionnaire to May 30, 1997 and June 4, 1997, respectively. Accordingly, we are not able to include a COP analysis in our preliminary determination. We will analyze the respondents' COP and CV data for our final determination.

On April 15, 1997, petitioners submitted a request that the scope of their petitions be amended to include three items—plate in coil; plate made to carbon plate specifications regardless of alloy content; and plate sold to nominal plate thicknesses whose actual thickness is slightly less than the thickness of plate but within specified thickness tolerances. With respect to plate in coil, petitioners maintain that this product has essentially the same physical characteristics and end uses as cut-to-length plate. Petitioners further

claim that a post-initiation shift has occurred in the pattern of trade from cut-to-length plate to plate in coil form, and that such a development indicates that any eventual order on cut-to-length plate will be susceptible to circumvention. Petitioners submitted additional information on May 9, 1997. Respondents submitted extensive rebuttal comments on April 25, 1997, and May 30, 1997.

Because of the very recent submission of arguments on these complex and technical subjects, we were unable to fully analyze all of the relevant information on the record prior to this preliminary determination. In order to fully examine petitioners' claims, we intend to carefully examine all evidence and argument on the record regarding this matter and issue a decision as soon as possible.

On April 30, 1997 (62 FR 23433) we further postponed the preliminary determination until not later than June 3, 1997.

On May 12, 1997, petitioners provided comments on deficiencies in Iscor's response to the Department's questionnaire, including Iscor's failure to provide several expense items on a transaction specific basis. The Department has reviewed the allocation methodology reported by Iscor for these items and has decided that for purposes of the preliminary determination we will allow the reported expense and cost data. However, at verification the Department will analyze the reported allocation methodology and examine Iscor's statement that it is unable to provide expense and cost data on a transaction specific basis.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2)(A) of the Act, on May 14, 1997, Highveld and Iscor requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination. Our preliminary determination is affirmative, and Highveld and Iscor account for a significant proportion of exports of the subject merchandise. In addition, we are not aware of the existence of any compelling reasons for denying this request. As a result we are granting the postponement request, in accordance with section 735(a)(2)(A) of the Act. Therefore, the final determination will be due not later than 135 days after the publication of this preliminary determination. (See memorandum from Joseph A. Spetrini to Robert S. LaRussa dated May 28, 1997.) Suspension of liquidation will be extended accordingly. See Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan, 61 FR 8029 (March 1, 1996).

Scope of the Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 1995, through September 30, 1996. The period of this investigation comprises each exporter's four most recent fiscal quarters prior to the filing of the petition.

Fair Value Comparisons

To determine whether sales of the subject merchandise by respondents to the United States were made at less than fair value, we compared the Export Price (EP) or Constructed Export Price (CEP), where appropriate, to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared the weighted average EPs or CEPs to weighted-average NVs during the POI. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics and level of trade.

(i) Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the ''Scope of Investigation'' section of this notice, produced in South Africa by the respondents and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): paint, quality, specification and/or grade, heat treatments, standard thickness, standard width, whether or not checkered, and descaling. It is our practice where sales were made in the home market on a different weight basis from the U.S. market (theoretical versus actual weight), to convert all quantities to the same weight basis, using the conversion factors supplied by the respondents, before making our fair-value comparisons. (See Final Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate from Finland, 58 FR 37122 (July 9, 1993) and Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan, 57 FR 53705 (November 12, 1992.)) For Iscor, we noted inexplicable discrepancies between the data reported in the quantity and the converted quantity fields. Therefore, for the preliminary results the converted quantities provided by Iscor were disregarded. Consequently, we conducted our analysis based on data reported in the quantity field, which contains weights based on either actual or theoretical weight. We are requesting additional information from Iscor to clarify the conversion weights. We will look at this issue more closely at verification and invite parties to comment on it.

(ii) Level of trade

To the extent practicable, we determine normal value for sales at the same level of trade as the U.S. sales (either EP or CEP). When there are no sales at the same level of trade we compare U.S. sales to home market (or, if appropriate third country) sales at a different level of trade. For both EP and CEP, the relevant transaction for level of trade is the sale from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the EP results in a price that would have been charged if the importer had not been affiliated. The CEP is the price obtained after removing from the first resale to an independent U.S. customer profit and expenses deducted under section 772(d) of the Act. These expenses represent activities undertaken by, or on behalf of, the affiliated importer. The deduction of expenses under section 772(d) will normally yield a different level of trade for the CEP than for the later resale which is used for the starting price. Movement charges, and duties and taxes deducted under section 772(c) of the Act do not represent activities of the affiliated importer and are not removed as they do not affect the level of trade. The NV level of trade is that of the starting price of sales in the home market. When NV is based on constructed value, the level of trade is that of the sales from which we derive SG&A and profit.

To determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user. The final user could be an individual consumer or an industrial user, but the marketing process for all goods starts with a producer and ends with a user. The chain of distribution between the two may have many or few links, and somewhere in this process the respondent's sales occur. In the United States this is generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for alleged level of trade. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are useful as they are commonly used to describe levels of trade by respondents, but without substantiation, are insufficient to establish that a claimed level of trade is valid. An analysis of selling functions substantiates or invalidates claimed customer classifications based on levels of trade. If the claimed levels are different, so should be the selling functions performed in selling to those levels. Conversely, if levels of trade are nominally the same, so should be the selling functions performed. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. A difference in level of trade is characterized by purchasers at different places in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare home market sales at a different level of trade than U.S. sales, we make a level-of-trade adjustment if the difference in level of trade affects price comparability. Any effect on price comparability is determined by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. We calculate the difference in the average of the net prices of the same models sold at different levels of trade. Net prices are used because any difference will be due to differences in level of trade rather than other factors. The average difference in net prices is used to adjust the NV when it is different from the level of trade of the export sale. If there is a pattern of no price differences, then the difference in level of trade does not have a price effect, and no adjustment is necessary.

In terms of granting a CEP offset, the statute also provides an adjustment to NV if it is compared to U.S. sales at a different level of trade, provided the NV level is more remote from the factory, and we are unable to determine whether there is or is not a price effect of different levels of trade in the home market. This latter situation can occur where there is no home market level of trade equivalent to the U.S. sales level, or where there is an equivalent home market level, but the data are insufficient to support a conclusion on price effect. The CEP offset is the lower of the two following:

- The indirect selling expenses on the home market sale; or
- The indirect selling expenses deducted from the starting price used to calculate CEP.

The CEP offset is not automatic each time export price is constructed. It is only applicable when the level of trade of the affiliated importer is less advanced than the level of trade of the home market purchaser, and the available data do not provide an appropriate basis for determining whether there is an effect on price comparability.

Iscor did not claim a difference in level of trade between its U.S. (EP) and home market sales. Its response indicates that there are significant differences between the selling functions it performs for sales to its unaffiliated U.S. customers, which are resellers, and either home market local merchants or end-users. Iscor's sales to U.S. customers appear to be at a different stage in the marketing process from either local merchants or end-users in the home market. However, we are unable to determine if this difference in level of trade affects price comparability, as all of Iscor's home market sales are at the same level of trade. For these preliminary results, we have treated all of Iscor's home market sales as being at a single level of trade and we have made no level of trade adjustment when matching its U.S. sales to these home market sales. We will look at this issue more closely at verification and invite parties to comment on it.

Highveld claimed sales were made in the home market at two different levels of trade—large-scale service centers/distributors and smaller service centers/distributors. Highveld claims that the difference between these levels is that additional time is spent servicing the larger service centers and that they receive preferential treatment. Highveld claims that all of its U.S. sales were made at one level of trade. That is, Highveld's CEP sales, after making the applicable adjustments, are at the same level of trade as its EP sales.

Based on our analysis of the selling functions performed by Highveld, we found that a single level of trade exists in each market. We found that with respect to the home market, large-scale service centers/distributors and smaller service centers/distributors are not at different stages in the marketing process. Also, there do not appear to be any significant differences in selling functions between these two groups of customers, although Highveld may provide certain functions to large-scale service centers/distributors at a higher intensity.

We then compared selling functions in the U.S. market and in the home market. There appear to be several differences between the selling

functions performed for sales to U.S. and home market customers, notably with respect to just-in-time delivery, advertising, market research and product development, which are provided in the home market but not in the United States. However, we are unsure as to whether U.S. and home market sales—both of which include sales to large resellers—are at different stages in the marketing process. Nor is there sufficient information on the record to determine the significance of the noted differences in selling functions. For these preliminary results we find, therefore, that sales in the home market and in the U.S. market are at the same level of trade and that no level of trade adjustment is warranted. As there is no difference in level of trade, Highveld does not qualify for a CEP offset. Therefore, we made no adjustment. We will look at this issue more closely at verification and invite parties to comment on it.

(iii) Currency Conversion

For purposes of the preliminary determination, we made currency conversions using the official daily exchange rate in effect on the date of the U.S. sale. These exchange rates were derived from actual daily exchange rates certified by the Federal Reserve Bank of New York. (See Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996.)) Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. (*See*, 61 FR at 9435.) The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar and was not applicable in this case.

In this investigation, there were certain days of the POI for which we substituted the benchmark for the daily rate because the daily rate involved a fluctuation. We saw no reason in this case to deviate from established practice, since South Africa is not a high-inflation economy, and the decline in the rand was not so precipitous and large as to reasonably preclude the occurrence of fluctuations.

Export Price

We calculated the price of United States sales based on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold to unaffiliated purchasers in the United States prior to the date of importation. In certain instances, however, we determined that CEP as defined in section 772(b) of the Act, was a more appropriate basis for the price of the United States sales. These instances involved sales made by Highveld to its U.S. affiliate, Newco Steel Trading (NST), which negotiates prices and quantities with its U.S. customers, and sells the subject merchandise to the U.S. customers. Newco Steel Trading company operates as Highveld's exclusive distributor for sales of the subject merchandise in the United States, and as such, undertakes selling activities exceeding those of processing sales-related documentation. Specifically, NST negotiates prices for particular products with its customers on a case-by-case basis, pays Highveld for the product order based on a price agreement, and takes title to the merchandise which is physically transferred to U.S. customers by common carriers.

For both respondents, we calculated EP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, international freight, foreign brokerage and handling, marine insurance, early payment discounts, pre-sale warehousing expenses, and U.S. Customs duties.

We calculated CEP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions for the starting price for the foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. Customs duties, commissions, inventory carrying expenses, credit expenses, and indirect selling expenses. Finally, we made an adjustment for the amount of profit allocated to these expenses, in accordance with section 772(d)(3) of the Act.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade. We excluded from our analysis a limited number of reported home market sales made by Iscor to a member country of the Southern African Customs Union, which we determined were not home market sales.

Where appropriate, we deducted rebates, discounts, credit, inland freight, pre-sale warehousing, and packing. We also made adjustments, where appropriate, for home-market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons. In comparisons to EP and CEP sales, we increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act. We also made adjustments to NV for physical differences in merchandise (''diffmer''). The Department notes that it has certain questions regarding the diffmer adjustments calculated from Highveld's reported data. In particular, significantly different diffmer adjustments were calculated for pairs of U.S. and home market product codes, which apparently differed only by the same difference in specification. We will look further at this issue at verification and invite comments from interested parties.

Verification

As provided in section 782(i) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds EP or CEP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Highveld	15.77
Iscor	31.45
All Other	23.77

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

In accordance with 19 CFR 353.38, case briefs in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than Friday, September 5, 1997, and rebuttal briefs, no later than Friday, September 12, 1997. A list of authorities used and a summary of arguments made in the briefs should accompany these briefs. Such summary should be limited to five pages total, including footnotes. We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments made in case or rebuttal briefs. At this time, the hearing is scheduled for Friday, September 19, 1997, time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act.

Dated: June 3, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–15292 Filed 6–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–808]

Preliminary Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Eugenia Chu, or Yury Beyzarov, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0193, (202) 482–3964, or (202) 482–2243, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as codified at 19 CFR part 353 (April 1, 1996).

Preliminary Determination

We determine preliminarily that certain cut-to-length carbon steel plate from the Russian Federation is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (61 FR 64051, December 3, 1996), the following events have occurred:

On December 19, 1996, the United States International Trade Commission (ITC) issued an affirmative preliminary determination in this case (*see* ITC Investigations Nos. 731–TA–753–756). The ITC found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the Russian Federation of certain cut-to-length carbon steel plate.

The Department issued its antidumping questionnaires to the Russian Embassy on December 20, 1996, and requested the Embassy to forward the documents to all Russian producers/exporters of certain cut-to-length carbon steel plate, as well as to manufacturers who produced the subject merchandise for companies who were engaged in exporting subject merchandise to the United States during the period of investigation. We requested the Embassy to inform these companies that they must respond by the due dates. We also sent courtesy copies to the companies whose names and complete addresses had been identified in the petition.

On January 8, 1997, the Department conducted a questionnaire presentation in the Russian Federation. Attending the presentation were officials from the Russian Ministry of Foreign Economic Relations and potential producers/exporters of certain cut-to-length carbon steel plate.

On January 10, 1997, Geneva Steel Company and Gulf States Steel Company (petitioners), alleged that critical circumstances exist with respect to imports of certain cut-to-length carbon steel plate from the Russian Federation. This issue is addressed in the ''Preliminary Determination of Critical Circumstances'' section of this notice.

On February 6, 1997, the Department provided interested parties with the opportunity to submit published, publicly available information for the Department to consider when valuing the factors of production and for surrogate country selection. We received comments from interested parties at the end of February 1997.

In January and February 1997, one Russian company, JSC Severstal (Severstal), submitted responses to sections A, C, and D of the questionnaire. Severstal is a Russian exporter of subject merchandise. We issued supplemental questionnaires to this respondent company on March 7, 1997 and received completed responses on April 4, and 11, 1997.

Severstal reported that it sold subject merchandise through unrelated trading companies at the port of export in Russia or the Baltic states. In light of this fact, the Department concluded that clarification was required as to whether these resellers sold additional subject

merchandise (unreported by the respondents) to the United States. Therefore, in March 1997, we also issued trading company questionnaires to Severstal's resellers. However, we received no responses.

Also in March, in response to the Russian government's comments on Russia's nonmarket economy (NME) status, the Department issued the Russian government a questionnaire to clarify whether the Russian Federation's NME status should be revoked. However, on March 28, 1997, the Russian Federation informed the Department that it will not be seeking market-economy status in this proceeding. This issue is addressed in the ''Nonmarket Economy Country Status'' section of this notice.

Except for Severstal, none of the other companies served with a questionnaire responded to the Department's original questionnaire.

On April 15, 1997, petitioners submitted a request that the scope of their petitions be amended to include three items—plate in coil; plate made to carbon plate specifications regardless of alloy content; and plate sold to nominal plate thicknesses whose actual thickness is slightly less than the thickness of plate but within specified thickness tolerances. With respect to plate in coil, petitioners maintain that this product has essentially the same physical characteristics and end uses as cut-to-length plate. Petitioners further claim that a post-initiation shift has occurred in the pattern of trade from cut-to-length plate to plate in coil form, and that such a development indicates that any eventual order on cut-to-length plate will be susceptible to circumvention. Petitioners submitted additional information on May 9, 1997. Respondents submitted extensive rebuttal comments on April 25, 1997, and May 30, 1997.

Because of the very recent submission of arguments on these complex and technical subjects, we were unable to fully analyze all of the relevant information on the record prior to this preliminary determination. In order to fully examine petitioners' claims, we intend to carefully examine all evidence and argument on the record regarding this matter and issue a decision as soon as possible.

On April 30, 1997 (62 FR 23433) we further postponed the preliminary determination until not later than June 3, 1997.

Scope of the Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1996, through September 30, 1996.

Nonmarket Economy Country Status

The Department has treated the Russian Federation as a nonmarket economy country (NME) in all past antidumping investigations and administrative reviews (see, e.g., Titanium Sponge from the Russian Federation: Preliminary Results of Antidumping Administrative Review, 62 FR 25920 (May 12, 1997); Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation, 60 FR 16440 (March 30, 1995); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Ferrovanadium and Nitridid Vanadium from the Russian Federation, 60 FR 438 (January 4, 1995)). A designation as an NME remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act). Therefore, for this preliminary determination, the Department will continue to treat the Russian Federation as an NME.

On January 9, 1997 the Russian Federation submitted a filing, on the record, requesting market economy status. The filing consisted of a letter and several Russian laws. On March 25, 1997, the Department drafted a questionnaire addressed to the Department of the Ministry for Foreign Economic Relations of the Russian Federation requesting additional information for Market Economy Status. On April 22, 1997, the Department contacted the Russian embassy via telephone regarding the Department's questionnaire on market economy status. The Embassy conveyed to Department personnel that the Russian Federation will not be seeking market economy status in this proceeding. Thus, the Department will continue to treat the Russian Federation as an NME.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c) of the Act directs the Department in most circumstances to base normal value (NV) on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are comparable in terms of economic development to the NME country and are significant producers of comparable merchandise. The sources of individual factor prices are discussed under the NV section below.

The Department has determined that Tunisia, Peru, Poland, Venezuela, Brazil, South Africa, and Turkey are countries comparable to the Russian Federation in terms of overall economic development. See Policy Memorandum, dated January 29, 1997.

According to the available information on the record, we have determined that Brazil is an appropriate surrogate because it is at a comparable level of economic development and is a significant producer of comparable merchandise. Furthermore, there is a wide array of publicly available information for Brazil. Accordingly, we have calculated NV using Brazilian prices to value the Russian producers'

factors of production, when available and where appropriate. We have obtained and relied upon public information wherever possible.

Separate Rates

The Department presumes that a single dumping margin is appropriate for all exporters in a non market economy country. See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). The Department may, however, consider requests for a separate rate from individual exporters. Severstal has requested a separate, company-specific rate. The claimed ownership structure of Severstal during the POI is that of a publicly owned joint stock company, where the state owns 20% of the shares.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers) and amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if a respondent can demonstrate the absence of both de jure and de facto governmental control over export activities. For a complete analysis of separate rates, see Separate Rates Memorandum, dated June 3, 1997.

1. Absence of De Jure Control

An individual company may be considered for separates rates if it meets the following de jure criteria: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. The respondents have placed on the administrative record a number of documents to demonstrate absence of de jure control. These documents include laws, regulations, and provisions enacted by the central government of the Russian Federation, describing the deregulation of Russian enterprise as well as the deregulation of the Russian export trade, except for a list of products that may be subject to central government export constraints. Respondents claim that the subject merchandise is not on this list. This information supports a preliminary finding that there is an absence of *de jure* government control. See Separate Rates Memorandum, dated June 3, 1997.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices (''EP'') are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Severstal has asserted the following: (1) It establishes its own EPs; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it selects its own management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. In addition, Severstal's questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is an absence of de facto governmental control of the export functions of these companies.

Consequently, we determine preliminarily that Severstal meets the criteria for application of separate rates. *See* Separate Rates Memorandum, dated June 3, 1997.

The Russia-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of certain cut-to-length carbon steel plate from the Russian Federation is greater than the total quantity and value of steel plate reported by all Russian companies that submitted responses. Given this discrepancy, we conclude that not all exporters of Russian cut-to-length carbon steel plate responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the Russia-wide rate—to all exporters in the Russian Federation (other than Severstal), based on our presumption that those respondents who failed to respond constitute a single enterprise and are under common control by the Russian Federation government. *See*, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026 (April 30, 1996).

This Russia-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including the information drawn from the petition.

As discussed above, all Russian exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. In such situations, the Department generally selects as total facts available either the higher of the average of the margin from the petition or the highest rate calculated for a respondent in the proceeding. In the present case, the average margin in the petition is higher than the one calculated rate. Accordingly, the Department has based the Russia-wide rate on information in the petition. In this case, the average petition rate is 185.00 percent.

Section 776(c) of the Act provides that where the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonable at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA clarifies that the petition is ''secondary information'' and that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The information contained in the petition shows that petitioners calculated export price based on two methods: (1) The import values declared to the U.S. Customs Service; and (2) an average export price derived from actual U.S. selling prices known to petitioners. We compared the starting prices used by petitioners less the importer mark-ups against prices derived from U.S. import statistics and found that the two sets of prices were consistent. We also compared the movement charges used in the petition with the surrogate values used by the Department in its margin calculations and found them to be consistent.

The information in the petition with respect to the normal value (NV) is based on factors of production used by the petitioners in the production of steel plate. Petitioners submitted usage amounts for materials, labor and energy, adjusted for known differences in production efficiencies. Petitioners submitted three cost models in the petition: 1) Basic Oxygen Furnace (BOF) Cost Model; 2) Open-Hearth Furnace Cost Model; and 3) Weighted Average Normal Value of the BOF and Open-Hearth methods to account for differences between the production processes of petitioners and potential respondents.

The margins in the petition ranged from 139.97 to 230.38 percent obtained by comparing the normal values to the export price developed from customs values and to export prices developed from actual U.S. price quotes. For each method, petitioners submitted estimated dumping margins for the BOF method, the open-hearth method and a weighted average of the two. For more detail, see Corroboration Memorandum, dated June 3, 1997.

Fair Value Comparisons

To determine whether certain cut-to-length carbon steel plate from the Russian Federation sold to the United States by the Russian exporters receiving separate rates were made at less than fair value, we compared the EP to the NV, as specified in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

For Severstal, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the factors of production.

We made adjustments as follows: We calculated EP based on packed, FOB prices to the port of loading on the Russian territory. We made deductions from the starting price, where appropriate, for brokerage and handling. However, because these services were provided by the Russian port, these services were assigned a surrogate value as available from Brazilian publicly available published data.

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the factory in the Russian Federation which produced the cut-to-length carbon steel plate sold by Severstal. We valued all the input factors using publicly available published information as discussed in the Surrogate Country section of this notice.

Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices in the surrogate country. Where we were not able to rely on domestic prices, we used import prices to value factors. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices or, in the case of labor rates, consumer price indices, published in the International Monetary Fund's International Financial Statistics. For a complete analysis of surrogate values, *see* Factors Memorandum.

To value coal, coke, iron, lime, ferro alloys, packing materials (locks), and scrap, we used public information from the latest data published by the United Nations for 1996 (Commodity Trade Statistics 1994, 3 Brazil Rev. 1995, at 19). For limestone, we used information from Commodity Trade Statistics 1993, Brazil Rev. 3, United Nations, 1994. For packing (bands), we used information reported in data from the 1992 UN Import Statistics; Taken from the Department of Commerce NME Factors Index, case A–821–805.

For natural gas, we relied on public information reported in the Diario Oficial No. 180, September 27, 1995. For electricity, we relied upon public information from the September 27, 1995 Official Publication of the Brazilian Government to obtain an average price for electricity.

To value rail transport for coal and for iron ore, we used public information reported in the July 1996 Cargo and Transport Magazine (Confederaco Nacional de Transporte Brazil). The exchange rate used was .9970 US$/R$. The source for the exchange rate for rail transport was obtained from the IMF's International Financial Statistics, January 1997, for the average during the POI.

To value skilled labor, we used the County Reports on Human Rights Practices for 1996, from the U.S. Department of State. For unskilled labor, we relied on data obtained from a U.S. Department of Commerce cable dated October 1994. To value overhead, SG&A, and profit, we used public information reported in the 1996/1997 Brazil company handbook. These are the average percentages for various Brazilian iron and steel companies. To value brokerage, we relied on public information from Case No. A–351–817, Plate from Brazil, Usiminas, Section C Response at Exh.6, dated November 21, 1996.

Severstal reported the amount of slag, a by-product of the plate production process, produced in the production of the subject merchandise. Normally, the Department offsets the calculated cost of manufacturing by the value of any by-products. The only surrogate value for slag from Brazil was aberrationally high when compared to an available U.S. rate. Based on our knowledge of the steelmaking process, we know that slag is a by-product with a relatively low value (compared to the price of steel plate). We were able to locate an appropriate value for slag from the U.S. Geological Survey, Mineral Commodities Summaries from February 1997. We used the U.S. slag value for the preliminary determination. We will continue to try to locate an appropriate surrogate value from Brazil, or another country at a comparable level of development for our final determination.

Preliminary Determination of Critical Circumstances

On January 10, 1997, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of certain cut-to-length carbon steel plate. In accordance with 19 CFR 353.16(b)(2)(i) (1996), since these allegations were filed earlier than the deadline for the Department's preliminary determination, we must issue our preliminary critical

circumstances determinations not later than the preliminary determination.

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

The statute and the Statement of Administrative Action which accompanies the Uruguay Round Agreements Act (SAA) are silent as to how we are to make a finding that there was knowledge that there was likely to be material injury. Therefore, Congress has left the method of implementing this provision to the Department's discretion.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the plate at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. See, e.g., Preliminary Critical Circumstances Determination: Honey from the People's Republic of China (PRC), 60 FR 29824 (June 6, 1995) (*Honey*). Since the company specific margins for EP sales in our preliminary determination for carbon steel plate are greater than 25 percent for Severstal, we have imputed knowledge of dumping.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports during the critical circumstances period—the 90-day period beginning with the initiation of the investigation (*see* 19 CFR 353.16(g)). If, as in this case, the ITC preliminarily finds threat of material injury (*See* Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine, U.S. International Trade Commission, December 1996), the Department will also consider the extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period and the magnitude of the margins in determining whether a reasonable basis exists to impute knowledge that material injury was likely.

In this case, imports of Russian plate increased 145 percent in the three months following the initiation of the investigation when compared to the three months immediately preceding initiation, or almost ten times the level of increase needed to find ''massive imports'' during the same period (*see* below). Furthermore, we have preliminarily found margins of 61.23 percent for Severstal.

Based on the ITC's preliminary determination of threat of injury, the increase in imports noted above, and the high preliminary margins, the Department determines that there is a reasonable basis to believe or suspect that the importer knew or should have known that there was likely to be material injury by means of sales of the subject merchandise at less than fair value.

To determine whether imports were massive over a relatively short time period, the Department typically compares the import volume of the subject merchandise for the three months immediately preceding and following the initiation of the proceeding. *See* 19 CFR 353.16(g). Pursuant to 19 CFR 353.16(f)(2), the Department will consider an increase of 15 percent or more in the imports of the subject merchandise over the relevant period to be massive. As noted, imports of the subject merchandise increased 145 percent during the relevant period, and thus we determine that imports have been massive.

Thus, because we determine that there is a reasonable basis to believe or suspect that the importer knew or should have known that Russian exporters were selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and that there have been massive imports of the subject merchandise over a relatively short time period, we preliminarily determine that critical circumstances exist for Severstal.

For companies subject to the Russia-wide rate (i.e., companies which did not respond to the Department's questionnaire), we are imputing knowledge based on the Russia-wide rate, and determine, based on facts available, that there were massive imports of certain cut-to-length carbon steel plate by companies that did not respond to the Department's questionnaire. Therefore, we preliminarily determine that critical circumstances exist with regard to these companies.

We find that critical circumstances exist for cut-to-length carbon steel plate sales by all Russian exporters.

Verification

As provided in section 782(i) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject from Ukraine, that are entered, or withdrawn from warehouse, for consumption on or after the date ninety days prior to the date of publication of this notice in the **Federal Register**. We will instruct Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP, as indicated below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Severstal	61.23
The Russia-Wide Rate	185.00

The Russia-Wide Rate

A Russia-wide rate has been assigned to certain cut-to-length carbon steel plate based on the average margin contained in the petition, as amended by the Department. The Russia-wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with

material injury, by reasons of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

In accordance with 19 CFR 353.38 (1996), case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the publication of this preliminary determination, and rebuttal briefs, no later than 5 days after the filing of case briefs. A list of authorities used and a summary of arguments made in the briefs should accompany these briefs. Such summary should be limited to five pages total, including footnotes. We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, time, date, and room to be determined. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) (1996), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by August 18, 1997.

This determination is published pursuant to section 777(i) of the Act.

Dated: June 3, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–15293 Filed 6–10–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From The People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Patience, Stephen Jacques, or Jean Kemp, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3793.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 353 (April 1, 1996).

Preliminary Determination

We determine preliminarily that certain cut-to-length carbon steel plate from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (61 FR 64051, December 3, 1996), the following events have occurred:

On November 27, 1997, we sent a survey to the Chinese Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') and the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (''CCCMC'') to determine the identity of producers and exporters of subject merchandise, but we received no response.

On December 19, 1996, the United States International Trade Commission (''ITC'') issued an affirmative preliminary injury determination in this case (see ITC Investigations Nos. 731TA–753–756). The ITC found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of steel plate. We issued an antidumping questionnaire to the Chinese Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') with a list of 20 possible producers of subject merchandise and requested MOFTEC to forward it to all producers/exporters of subject merchandise on December 20, 1996. We also sent courtesy copies to the 20 producers on that date. These producers were identified in Iron and Steel Works of the World, 11th edition, 1994.

The questionnaire is divided into four sections. Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively. (Section B does not normally apply in antidumping proceedings involving the PRC). Section D requests information on the factors of production of the subject merchandise.

On January 10, 1997, Geneva Steel Company and Gulf States Steel Company, (petitioners) amended their petition to allege that critical circumstances existed with respect to subject merchandise.

On January 24, 1997 the following submitted their section A response: China Metallurgical Import & Export Liaoning Company (Liaoning), an exporter of subject merchandise; Wuyang Iron and Steel Company (Wuyang), which produced the merchandise sold by Liaoning; Anshan Iron and Steel Complex (AISCO), a producer of subject merchandise; Angang International Trade Corporation (Anshan International), a wholly-owned AISCO subsidiary in China with its own business license to import and export merchandise, and Sincerely Asia, Limited (SAL) a partially-owned Hong Kong affiliate of AISCO involved in sales of subject merchandise to the United States, (collectively, Anshan); Baoshan Iron & Steel Corporation (Bao), a producer of subject merchandise; Bao Steel International Trade Corporation (Bao Steel ITC), a wholly-owned subsidiary of Bao responsible for selling Bao material domestically and abroad; and Bao Steel Metals Trading Corporation (B. M. International), a partially-owned U.S. subsidiary involved in U.S. sales, (collectively

Baoshan); Wuhan Iron & Steel Company (Wuhan) a producer of subject merchandise; International Economic and Trading Corporation (IETC), a wholly-owned subsidiary responsible for exporting WISCO merchandise; Cheerwu Trader Ltd. (Cheerwu) a partially-owned Hong Kong affiliate of Wuhan involved in sales of subject merchandise to the United States (collectively, WISCO); Shanghai Pudong Iron and Steel Company (Shanghai Pudong) a producer and exporter of subject merchandise. *See* the Collapsing section of this memorandum, below. We consider Anshan, Baoshan, Liaoning, WISCO and Shanghai Pudong to be sellers of the subject merchandise during the POI.

In a letter entering notice of its appearance, Liaoning stated that it purchased and sold subject merchandise from an unaffiliated producer, Wuyang Iron and Steel Company (''Wuyang''). We therefore requested that Wuyang also respond to the Department's questionnaires. Wuyang complied with the Department's request.

On February 12 and February 14, 1997, the five exporters submitted their section C responses. On February 19 and February 20, 1997, Anshan, Baoshan, Wuyang, Shanghai Pudong, and WISCO producer/supplier factories submitted section D questionnaire responses.

On March 11, 1997, we issued a supplemental questionnaire to Liaoning and Wuyang. On March 12, 1997 we issued supplemental questionnaires to Anshan, Shanghai Pudong, and WISCO. On March 13, 1997, we issued a supplemental questionnaire to Baoshan.

We received a supplemental questionnaire response from Liaoning and Wuyang on April 9, 1997. We received supplemental questionnaire responses from Anshan, Baoshan , Shanghai Pudong and WISCO on April 14, 1997. Anshan provided corrections to minor errors in its responses on April 21, 1997, Baoshan submitted corrections on April 24, 1997 and Shanghai Pudong submitted corrections in their April 29, 1997 submission.

On May 2, 1997, we issued supplemental questionnaires requesting additional information regarding each respondent's labor consumption factors. Additionally, we requested information about Shanghai Pudong's affiliation with Shanghai No. 1 a non-exporting producer of subject merchandise which Shanghai Pudong had earlier indicated shared a common trustee, Shanghai Metallurgical Holding (Group) Co. (''Shanghai Metallurgical''). Wuyang submitted its response on May 9, 1997. The other respondents submitted their labor information on May 16, 1997. At their request, we granted Shanghai Pudong an extension, until May 23, 1997, to submit affiliation information.

On January 30, 1997, we requested publicly-available information for valuing the factors of production and for surrogate country selection. Petitioners had already provided comments on surrogate values to be used in this investigation in their petition of November 5, 1996. Respondents provided their comments on this matter on March 4, 1997. Petitioners provided further surrogate values and rebuttal to respondent's comments on April 10, 1997. On April 11, 1997, respondents objected this filing. Respondent stated that petitioners sought to insert new information on the record in an untimely fashion. We granted respondents an opportunity to submit comments on petitioners' April 10, 1997 filing. We received no response.

On March 28, 1997, we postponed the preliminary determination until not later than May 14, 1997 (62 FR 14887), because we determined this investigation to be extraordinarily complicated within the meaning of section 733(c)(1)(B)(i) of the Act.

On April 15, 1997, petitioners submitted a request that the scope of their petitions be amended to include three items—plate in coil; plate made to carbon plate specifications regardless of alloy content; and plate sold to nominal plate thicknesses whose actual thickness is slightly less than the thickness of plate but within specified thickness tolerances. With respect to plate in coil, petitioners maintain that this product has essentially the same physical characteristics and end uses as cut-to-length plate. Petitioners further claim that a post-initiation shift has occurred in the pattern of trade from cut-to-length plate to plate in coil form, and that such a development indicates that any eventual order on cut-to-length plate will be susceptible to circumvention. Petitioners submitted additional information on May 9, 1997. Respondents submitted extensive rebuttal comments on April 25, 1997, and May 30, 1997.

Because of the very recent submission of arguments on these complex and technical subjects, we were unable to fully analyze all of the relevant information on the record prior to this preliminary determination. In order to fully examine petitioners' claims, we intend to carefully examine all evidence and argument on the record regarding this matter and issue a decision as soon as possible.

On April 30, 1997 (62 FR 23433) we further postponed the preliminary determination until not later than June 3, 1997.

Scope of the Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1996, through September 30, 1996.

Non-Market-Economy Country Status

The Department has treated the PRC as a nonmarket-economy country (NME) in all past antidumping investigations and administrative reviews. *See, e.g.,* Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide); and Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China, 60 FR

22545 (May 8, 1995) (Furfuryl Alcohol). Neither respondents nor petitioners have challenged such treatment. Therefore, in accordance with section 771(18)(C) of the Act, we will continue to treat the PRC as an NME in this investigation.

Surrogate Country

When investigating imports from an NME, section 773(c)(1) of the Act directs the Department in most circumstances to base normal value (NV) on the NME producers' factors of production, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are comparable in terms of economic development to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department has determined that India, Pakistan, Sri Lanka, Egypt and Indonesia are countries comparable to the PRC in terms of economic development. *See* Memorandum from David Mueller to Edward Yang, dated January 29, 1997.

Customarily, we select an appropriate surrogate based on the availability and reliability of data from these countries. For PRC cases, the primary surrogate has usually been India if it is a significant producer of comparable merchandise. However, the Department has determined that Indonesia also is a significant producer of comparable merchandise.

We used India as the primary surrogate country and accordingly, we have calculated NV using Indian prices to value the PRC producers' factors of production, when available and appropriate. We have obtained and relied upon publicly-available information wherever possible. Where Indian surrogate values were not available or where we considered these values to be aberrational, we have used Indonesian import prices as surrogate values. For one factor, slag, we were unable to locate an appropriate surrogate value from any of the comparable countries identified above. Therefore, we selected a U.S. slag value as the most appropriate surrogate. *See* Concurrence Memoranda.

Non-Responsive Exporters

Consistent with Department practice, we presumed that those respondents who failed to respond constitute a single enterprise, and are under common control by the PRC government. See Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026 (April 30, 1996) (Bicycles). We applied a single antidumping deposit rate—the China-wide rate—to these exporters and all other exporters in the PRC who did not respond to our questionnaire.

Separate Rates

All of the respondents have requested separate, company-specific rates. In their questionnaire responses, respondents state that they are independent legal entities. Of the five respondents, Anshan, Baoshan, Liaoning and WISCO have reported that they are collectively-owned enterprises, registered as being ''owned by all the people'', Shanghai Pudong and Shanghai No. 1 are owned by Shanghai Metallurgical. Shanghai Metallurgical is also owned by ''all the people.'' Shanghai Pudong stated that it does not have any corporate relationship with any level of the PRC Government. As stated Silicon Carbide and Furfuryl Alcohol, ownership of a company by all the people does not require the application of a single rate. Accordingly, each of these respondents is eligible for consideration for a separate rate.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers) and amplified in Silicon Carbide. Under this test, the Department assigns separate rates in nonmarket-economy cases only if an exporter can affirmatively demonstrate the absence of both (1) *de jure* and (2) *de facto* governmental control over export activities. See Silicon Carbide and Furfuryl Alcohol.

1. De Jure Control

The respondents have placed on the administrative record a number of documents to demonstrate absence of *de jure* control. Respondents submitted the ''Law of the PRC on Industrial Enterprises Owned By the Whole People,'' adopted on April 13, 1988 (the Industrial Enterprises Law). The Department has previously determined that the Civil Law does not confer de jure independence on the branches of government-owned and controlled enterprises. *See Sigma Corp* v. *United States,* 890 F. Supp. 1077, 1080 (CIT 1995). However, the Industrial Enterprises Law has been analyzed by the Department in past cases and has been found to sufficiently establish an absence of *de jure* control of companies ''owned by the whole people,'' such as those participating in this case. (See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 14725, 14727 (June 5, 1995); Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China, 60 FR 14725, 14727 (March 20, 1995); and Furfuryl Alcohol. The Industrial Enterprises Law provides that enterprises owned by ''the whole people'' shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. The Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (Legal Persons Regulations), issued on July 13, 1988 by the State Administration for Industry and Commerce of the PRC, provide that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their business. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56046 (November 6, 1995).

In sum, in prior cases, the Department has analyzed the Chinese laws and regulations on the record in this case, and found that they establish an absence of de jure control. We have no new information in these proceedings which would cause us to reconsider this determination.

2. De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of

losses. See, e.g., Silicon Carbide and Furfuryl Alcohol.

Respondents have asserted the following: (1) They establish their own export prices independently of the government and without the approval of a government authority; (2) they negotiate contracts, without guidance from any governmental entities or organizations; (3) they make their own personnel decisions including the selection of management; and (4) they retain the proceeds of their export sales, use profits according to their business needs, and have the authority to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. The subject merchandise appears on the ''List of Products Subject to Export Permit Administration at Different Levels'' issued by the Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') on November 9, 1995. Respondents stated that, to the best of their knowledge, steel plate is included on the list because it is considered an important raw material for the economic development of China (e.g., for the use in the construction of basic infrastructure), and the Chinese government wishes to have a mechanism in place to ensure adequate domestic supply in the event of a shortage. Despite inclusion of the subject merchandise on this list, we have found no indication from the respondents' business licences that the issuing authority imposes any type of restriction on respondents' business (for a more complete explanation of this issue, see the Concurrence Memorandum).

Consequently, we preliminarily determine that the five responding exporters have met the criteria for the application of separate rates. We will examine this matter further at verification.

For non-responsive exporters, we preliminarily determine, as facts available, that they have not met the criteria for application of separate rates.

Facts Available: China-Wide Rate

The petition filed on November 5, 1996 identified 28 steel producers with the capacity to produce cut-to-length carbon steel plate during the POI. We received adequate responses from the five respondents identified above. We received certification of non-shipment by seven companies from the China Chamber of Commerce for Metals and Chemicals (CCCMC). Additionally, we received a letter from one respondent factory indicating shipments through parties who have not responded to the questionnaire. *See* Non-Responsive Exporters section above. All other companies did not respond to our questionnaire. Further, U.S. import statistics indicate that the total quantity and value of U.S. imports of cut-to-length carbon steel plate from the PRC is greater that the total quantity and value of plate reported by all PRC companies that submitted questionnaire responses. Given these discrepancies, we conclude that not all exporters of PRC plate responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the China-wide rate—to all exporters in the PRC (other than those receiving an individual rate), based on our presumption that those respondents who failed to respond constitute a single enterprise, and are under common control by the PRC government. See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026 (April 30, 1996) (Bicycles).

This China-wide antidumping rate is based on facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

As discussed above, all PRC exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. Accordingly, consistent with section 776(b)(1) of the Act, we have applied, as total adverse facts available, the highest margin calculated for a respondent in this proceeding. Based on our comparison of the calculated margins for the other respondents in this proceeding to the average margin in the petition, we have concluded that the highest calculated margin is the most appropriate record information on which to form the basis for dumping calculations in this investigation. Accordingly, the Department has based the China-wide rate on information from respondents. In this case, the highest calculated margin is 172.20 percent.

Section 776(c) of the Act provides that where the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA clarifies that the petition is ''secondary information.'' See SAA at 870. The SAA also clarifies that ''corroborate'' means to determine that the information used has probative value. *Id.* However, where corroboration is not practicable, the Department may use uncorroborated information.

The information contained in the petition shows that petitioners calculated export price based on two methods: (1) The import values declared to the U.S. Customs Service; and (2) an average Chinese export price derived from actual U.S. selling prices of Chinese exporters, known to petitioners. Petitioners stated that in order to ensure a fair value comparison, import and export values from the same HTS categories as subject merchandise were used to calculate the export price and the factor consumption rates were used as a basis for normal value. In addition, petitioners only used those HTS categories for subject products which included only subject merchandise. Petitioners made adjustments for foreign inland freight to FAS values to derive ex factory prices. They also submitted supporting documentation including an affidavit referring to sources and how petitioners obtained information concerning adjustments and that these adjustments represented current actual charges or expenses associated with the importation and sale of cut-to-length carbon steel plate into the U.S. market.

The information in the petition with respect to the normal value (NV) is based on factors of production used by the petitioners in the production of steel plate. Petitioners submitted usage amounts for materials, labor and energy, adjusted for known differences in

production efficiencies. Petitioners submitted three cost models in the petition: (1) Basic Oxygen Furnace (BOF) Cost Model; (2) Open-Hearth Furnace Cost Model; and (3) Weighted-Average Normal Value of the BOF and Open-Hearth methods to account for differences between the production processes of petitioners and potential respondents. We determine that this information has probative value and that we have corroborated, to the extent practicable, the data contained in the petition. *See* Corroboration Memorandum.

Fair Value Comparisons

To determine whether sales of certain cut-to-length carbon steel plate from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the ''United States Price'' and ''Normal Value'' sections of this notice.

Export Price

We based USP on export price (EP) in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because constructed export price methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average export prices (EPs) to the factors of production. See Company specific Calculation Memoranda, June 3,1997.

For those exporters that responded to the Department's questionnaire, we calculated EP based on prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, and foreign brokerage. *See* ''Factor Valuations'' section of this notice.

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on the value of the factors of production reported by the factories in the PRC which produced subject merchandise for the five exporters. Where an input was sourced from a market economy and paid for in market economy currency, we have used the actual price paid for the input to calculate the factors-based NV in accordance with our practice. *See Lasko Metal Products* v. *United States* (Lasko), 437 F. 3d 1442 (Fed. Cir. 1994). Otherwise, we used publicly available information from India where possible. Where appropriate Indian values were not available, we used publicly available information from Indonesia.

Certain respondents purchase certain raw materials through affiliated parties in Hong Kong. The Hong Kong parties also receive payment, and transfer the funds to the PRC respondents, from U.S. customers for the respondents' sales of plate. The amount of funds transferred to the PRC respondents is reduced by the cost of any inputs purchased on behalf of the PRC respondents. The Hong Kong affiliates also reduce the payment by administrative costs it charges the PRC respondents. In their responses, respondents provided sample contracts for market economy purchases. They included contracts between the Hong Kong affiliates and the original raw material suppliers as well as contracts between the material suppliers and the PRC respondents. They did not provide documentation of the transactions occurring between the PRC respondents and the Hong Kong affiliates. We valued the relevant inputs at the contract, market-economy, prices provided in the responses for the preliminary determination. We will seek additional clarification of these contracts and administrative costs at verification.

Shanghai Pudong's questionnaire response indicates that, within the meaning of section 771(33) of the Act, it may be affiliated with Shanghai No. 1 based on the fact that Shanghai Metallurgical serves as ''trustee'' for both companies and thus may exercise control over the two producers. Further, because both Shanghai Pudong and Shanghai No. 1 produce subject merchandise, the Department will consider whether these two firms should be treated as a single entity (i.e., ''collapsed''). In order for the Department to treat two or more producers as a single entity, the Department relies on a test set forth in *Nihon Cement* v. *United States,* 17 CIT 400, 425 (1993). Pursuant to that test, the Department will only collapse the producers if each of these criteria are met: (1) The producers must be affiliated, (2) the producers must have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities, and (3) there must be a significant potential for the manipulation of price or production. Because we lacked sufficient information to make the affiliation and collapsing decisions, we requested additional information from Shanghai Pudong regarding both its relationship with Shanghai No. 1 and Shanghai's No. 1's factors of production. At Shanghai Pudong's request, we granted an extension on the reporting of this information. Shanghai Pudong responded on May 23 advising that it does not control Shanghai No.1 and therefore could not obtain its factors of production. Based on the data received prior to the preliminary determination, including portions of the response regarding Shanghai No. 1, we have determined that it is not clear from the current record whether Shanghai Metallurgical controls Shanghai Pudong and Shanghai No. 1. Therefore, we will not collapse Shanghai Pudong and Shanghai No. 1 for the purposes of the preliminary determination. We will continue to examine this issue and we will verify the reported information of both Shanghai Pudong and Shanghai No. 1, and consider the information with respect to both producers for our final determination.

Four respondents identified a significant number of raw material inputs. Certain of these inputs appeared to be variations or subsets of larger inputs. We were unable to locate publicly available surrogate values for these inputs for this preliminary determination. *See* each responding firm's Calculation Memorandum. Based on the steel production process, we combined the inputs into the larger subcategories for which we have located a surrogate value in our preliminary determination. We will continue to try to locate a surrogate value for these inputs for our final determination.

Four respondents have identified a number of gases either produced and reused in the production process or purchased from outside sources for use in the production of subject merchandise. These respondents have argued that all of these gases should be treated as overhead items. Petitioners argue that these gases are direct inputs in the steelmaking process and should not be considered as overhead items. In previous cases in which the Department has used the same surrogate value, power and fuel are specifically removed from the overhead calculation so as to be treated as direct inputs. See Final Results of Antidumping Duty Administrative Review: Sebacic Acid from the PRC, 62 FR 10530, March 7, 1997. We treated these gases as direct inputs as they, in general, serve as power and fuel to the production process. We offset the cost of production by the amount of any by-product generated. This offset is based on our assumption that the by-products either are re-used as an input to the production processes or has a market for its uses. *See* Calculation Memoranda.

Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. Where we were not able to rely on domestic prices, we used import prices to value factors. We removed from the import data import prices from countries which the Department has previously determined to be NMEs. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices (WPI), or, in the case of labor rates, consumer price indices (CPI), published in the International Monetary Fund's International Financial Statistics. For a complete analysis of surrogate values, see each company's Factors Valuation Memorandum, dated June 3, 1997.

For certain raw material surrogate values, we used values as reported in the Monthly Statistics of Foreign Trade of India, Vol. II—Imports, Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce, Government of India, Calcutta. The price information from Monthly Statistics of Foreign Trade of India represents cumulative values for the period of April 1995 through January 1996. For each input value obtained from the above publication, we used the average value per one kilogram for that input from market economies. Import statistics from non-market economies were excluded in the calculation of the average value. Since the data from this publication is not contemporaneous with the POI, we adjusted material values for inflation by using WPI rate for India. We then converted each of the raw material inputs to U.S. dollars using an exchange rate conversion factor.

For certain material inputs, we were unable to obtain specific price information from India. Therefore, for these inputs, we resorted to public information from Indonesia. The values for these inputs were obtained from the publication Foreign Trade Statistics Bulletin Imports, March 1996. The price information represents cumulative values from January to March 1996. These inputs were adjusted for inflation.

Certain respondents reported the amount of slag, a by-product of the plate production process, produced in the production of subject merchandise and sold in China by some respondents. Normally, the Department offsets the calculated cost of manufacturing by the value of any by-products. The only surrogate value for slag from India or Indonesia was aberrationally high when compared to an available U.S. rate. Based on our knowledge of the steelmaking process, we know that slag is a by-product with a relatively low value (compared to the price of steel plate). We were able to locate an appropriate value for slag from the U.S. Geological Survey, Mineral Commodities Summaries from February 1997. We used the U.S. slag value for the preliminary determination. We will continue to try to locate an appropriate surrogate value from India, Indonesia, or another country at a comparable level of development for our final determination.

We were unable to locate specific surrogate values for each of the reported gases. Specifically, we were unable to locate surrogate values for the gases generated in the production facilities (*e.g.*, furnace gas). We will continue to search for surrogate values for each of the gases for the final determination. For our preliminary determination, we applied surrogate gas values for gases for which we could find a surrogate value and applied a natural gas surrogate value to the other gases for which we could not locate a value.

For certain factors for which we could not locate import values, we used values provided by petitioners which represent market values reported in the 1995–96 Annual Report for Steel Authority of India Limited (''SAIL''), a producer in India of cut-to-length carbon steel plate. We adjusted these values for inflation.

For materials purchased from market economy country suppliers that are paid for in a market economy currency and if the portion of the input from the market economy was significant, we used the actual purchase price paid during the POI as reported in the questionnaire responses. This practice is consistent with the Department's new regulations and with *Lasko*. In cases in which the same producer reported several different market economy suppliers for the same input, we used the average market economy price paid for that input.

For labor, we used the average labor cost per man-day worked for the Basic Metal and Alloys Industries as reported in the Ministry of Labour Government of India Annual Report 1994–1995. This source included in its calculation of labor values ''a sum of various components like wages and salaries; all types of bonus; money value of benefits in kind; old age benefits; maternity benefits; social security charges such as ESI compensation for injuries, family pension, lay-off/retrenchment benefits, and other group benefits.'' We applied a single labor rate for all levels of labor, *i.e.*, skilled, unskilled, and indirect labor. Accordingly, we adjusted for inflation from the time period of the information (1990–1991) to the POI using the CPI, as reported in the International Monetary Fund's International Financial Statistics. The work day in India is an eight-hour day. See Coumarin from PRC; Preliminary Determination of Sales at Less Than Fair Value, 59 FR 39727 (Aug. 4, 1994), citing to Country Reports: Human Rights Practices for 1990; Coumarin from the PRC; Final Determination of Sales at Less than Fair Value, 59 FR 66895 (Dec. 28, 1994) (Coumarin). Therefore, we then divided the surrogate value by 8 hours to arrive at an hourly wage rate. Petitioners have argued that the labor usage rates reported by respondents are abnormally low for steel production. We will carefully review the reported labor rates at verification and for our final determination.

For overhead, profit and SG&A expenses, we used information reported in the April 1995 Reserve Bank of India Bulletin. *See* Statement 1—''Combined Income, Value of Production, Expenditure and Appropriation Accounts, Industry Group-Wise, 1992–93.''

Respondents allocated a majority of the labor employed in their facilities to overhead and selling and general administrative (SG&A) tasks. Only a small percentage of the labor employed in respondents' facilities has been reported as direct costs of production and therefore included in our NV calculations. Conversely, the Indian surrogate values for overhead and SG&A do not include a separate allowance for labor. *See* Factor Valuation Memoranda. We therefore increased the surrogate overhead value to include the significant labor resources respondents allocated to overhead. *See*, Calculation Memoranda.

We included certain indirect materials as part of ''overhead expenses.'' In previous final determinations, the Department has considered inputs which ''are not direct materials consumed in the production process'' as part of factory overhead. See Brake Drums and Brake Rotors From the PRC; Notice of Preliminary Determination, 61 FR, 53190, 63196 (Oct. 10, 1996); Brake Drums and Brake Rotors From the PRC; Final Determination of Sales at Less than Fair Value, 62 FR 9154, 9160 (Feb. 24, 1997). The treatment of indirect materials as ''overhead'' is consistent with Compendium of Statements and Standards: Accounting (India).

In calculating the cost of raw material inputs in NME cases, we include an adjustment for the cost of transporting the input from the supplier to the respondent. This adjustment is based on the distance from the supplier to the producing factory and the mode of transportation; *see, e.g.,* Sulfanilic Acid from the People's Republic of China; Final Results and Partial Recission of Antidumping Duty Administrative Review, 61 Fed. Reg. 53702, 53705 (Comment 3) (October 15, 1996). We determine a value from the surrogate country based on this distance and on mode of transportation used. While all respondents provided distances for some of their inputs, only one of the respondents provided distances and mode of transportation for all material inputs. We requested this information for all inputs in our original and supplemental questionnaires. For each respondent that did not comply with our requests for this information, as to some inputs, we applied, as facts available, the highest freight cost calculated for any input of that respondent to those inputs for which we did not receive the required freight information. This presumes that the respondents chose not to provide information that would be adverse to them.

For the preliminary determination, we were unable to find specific surrogate values for a small number of inputs. Therefore, we excluded them from our calculations for the preliminary determination. We will continue to research price information for these inputs for the final determination.

Critical Circumstances

On January 10, 1997, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to subject merchandise. In accordance with 19 C.F.R. 353.16(b)(2)(i) (1996), since these allegations were filed earlier than the deadline for the Department's preliminary determination, we must issue our preliminary critical circumstances determinations not later than the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

The statute and the Statement of Administrative Action (SAA) which accompanies the Uruguay Round Agreements Act are silent as to how we are to make a finding that there was knowledge that there was likely to be material injury. Therefore, Congress has left the method of implementing this provision to the Department's discretion.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the plate at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. *See, e.g.,* Preliminary Critical Circumstances Determination: Honey from the People's Republic of China (PRC), 60 FR 29824 (June 6, 1995) (*Honey*). Since the company specific margins for EP sales in our preliminary determination for carbon steel plate are greater than 25 percent for Anshan, Shanghai Pudong and WISCO, we have imputed knowledge of dumping. We found that Baoshan and Liaoning had margins below 25 percent. Because we found margins to be below 25 percent, we do not impute importer knowledge of dumping. Therefore for Baoshan and Liaoning, we find that critical circumstances do not exist with respect to the subject merchandise.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports during the critical circumstances period—the 90-day period beginning with the initiation of the investigation (see 19 C.F.R. 351.16(g). If, as in this case, the ITC preliminarily finds threat of material injury (*See,* Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine, U.S. International Trade Commission, December 1996), the Department will also consider the extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period and the magnitude of the margins in determining whether a reasonable basis exists to impute knowledge that material injury was likely.

In this case, imports of Chinese plate increased 29 percent in the three months following the initiation of the investigation when compared to the three months preceding initiation, or nearly two times the level of increase needed to find ''massive imports'' during the same period (*see* below). Furthermore, we have preliminarily found margins of 40.35 percent for Shanghai Pudong, 172.20 percent for Anshan and 51.70 for WISCO.

Based on the ITC's preliminary determination of threat of injury, the increase in imports noted above, and the high preliminary margins, the Department determines that there is a reasonable basis to believe or suspect that the importer knew or should have known that there was likely to be material injury by means of sales of the subject merchandise at less than fair value.

To determine whether imports were massive over a relatively short time period, the Department typically compares the import volume of the subject merchandise for the three months immediately preceding and following the initiation of the proceeding. *See* 19 C.F.R. 353.16(g). Pursuant to 19 C.F.R. 353.16(f)(2), the Department will consider an increase of 15 percent or more in the imports of the subject merchandise over the relevant period to be massive. As noted, imports of the subject merchandise increased 29 percent during the relevant period, and thus we determine that imports have been massive.

Thus, because we determine that there is a reasonable basis to believe or suspect that the importer knew or should have known that Anshan, Shanghai Pudong and WISCO were selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and that there have been massive imports of the subject merchandise over a relatively short time period, we preliminarily determine that critical circumstances exist for Anshan, Shanghai Pudong and WISCO.

For companies subject to the China-wide rate (i.e., companies which did not respond to the Department's questionnaire), we are imputing knowledge based on the China-wide rate, and determine, based on facts available, that there were massive imports of certain cut-to-length carbon steel plate by companies that did not

respond to the Department's questionnaire.

Therefore, we preliminarily determine that critical circumstances exist with regard to these companies.

Verification

As provided in section 782(i) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Baoshan and Liaoning, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For Anshan, Shanghai Pudong, WISCO and companies subject to the China-wide rate, we are directing Customs to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. We will instruct Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Anshan (AISCO/Anshan International/Sincerely Asia Ltd)	172.20
Baoshan (Bao/Bao Steel International Trade Corp/Bao Steel Metals Trading Corp)	14.20
Liaoning	8.19
Shanghai Pudong	40.35
WISCO (Wuhan/International Economic and Trading Corp/Cheerwu Trader Ltd).	51.70
China-wide Rate [1]	172.20

[1] The China-wide rate applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the publication of this preliminary determination, and rebuttal briefs, no later than five days after the filing of case briefs. A list of authorities used and a summary of arguments made in the briefs should accompany these briefs. Such summary should be limited to five pages total, including footnotes. We will hold a public hearing, if requested within 10 days of publication of this notice, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, time, date and room to be determined. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by August 18, 1997.

This determination is published pursuant to section 733(f) of the Act.

Dated: June 3, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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federal register

Wednesday
June 11, 1997

Part VI

Department of Housing and Urban Development

Real Estate Settlement Procedures Act; Revision of Special Information Booklet; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4243–N–01]

Real Estate Settlement Procedures Act; Notice of Revision of Special Information Booklet

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice; revision of special information booklet.

SUMMARY: This notice announces the availability of a revised special information booklet as required by the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2601–17) and prescribed by the Assistant Secretary for Housing—Federal Housing Commissioner.

ADDRESSES: The special information booklet that follows this notice is also available by sending a request to the Director, Office of Consumer and Regulatory Affairs, Attention: RESPA/Special Information Booklet, Room 9146, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Office of Consumer and Regulatory Affairs, (202) 708–4560, Room 9146, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On April 23, 1987, the Department issued the current edition of the special information booklet (52 FR 13566). That version provided a description of the nature and purpose of the costs relating to a real estate settlement, and an explanation of the HUD–1 Settlement Statement, escrow accounts used in connection with the loan, providers of real estate settlement services, and unfair practices and unreasonable or unnecessary charges. The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601–17) (RESPA) requires lenders to provide the special information booklet to each person borrowing money to finance the purchase of residential real estate within 3 business days after receiving the application.

Since 1987, RESPA has been amended on several occasions. (Cranston-Gonzalez National Affordable Housing Act, 1990, Public Law 101–625; the Dire Emergency Supplemental Appropriations Act, 1991, Public Law 102–27; the Housing and Community Development Act of 1992, Public Law 102–550; the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325; the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Public Law 104–208.) Consequently, certain parts of the special information booklet are outdated. Pursuant to 12 U.S.C. 2603, and 24 CFR 3500.6(b) of the Department's RESPA regulations, the Assistant Secretary for Housing—Federal Housing Commissioner has revised the special information booklet by addressing the legislative amendments, and by updating informational references and the booklet's discussion of the HUD–1 Settlement Statement. The revised booklet is published in today's **Federal Register** following this notice.

More specifically, the Assistant Secretary for Housing—Federal Housing Commissioner has revised the booklet to reflect changes in RESPA coverage as well as additional required disclosures relating to loan servicing transfers, escrow accounts, and affiliated service providers. The explanation of settlement services has been expanded to include current lending and settlement charges, such as fees for mortgage brokers, Computer Loan Origination (CLO) services, tax service, flood insurance, and lead based paint inspection services. The booklet was also updated to include other statutes related to fair credit, fair lending, flood insurance and lead based paint hazards which affect the lending and settlement process.

The Department will make a copy of the special information booklet available to any firm planning to publish the booklet for distribution to lenders. Firms interested in securing a copy should send their requests to the Director, Office of Consumer and Regulatory Affairs, Attention: RESPA/Special Information Booklet, Room 9146, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The booklet will also be available through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Department does not have a sufficient supply of the booklet and form to provide copies to all settlement service providers. Lenders may use the booklet as soon as it becomes available through normal sources. Previous editions may be used until supplies are exhausted or until September 9, 1997 whichever is earlier.

The Department is also making the booklet available to settlement service providers and consumers at the following web site address: http://www.hud.gov/fha/res/respa—hm.html

Paperwork Reduction Act

The information collection requirements for the special information booklet 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 2502–0265. 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.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, published in a final rule on September 27, 1996 (61 FR 50914), this notice and the special information booklet do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this notice and the special information booklet are categorically excluded from the requirements of the National Environmental Policy Act.

The Department is hereby publishing the revised special information booklet to provide appropriate notice of its contents. The text of the special information booklet for the Real Estate Settlement Procedures Act follows this notice.

Dated: June 2, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 97–15301 Filed 6–10–97; 8:45 am]

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June 1997

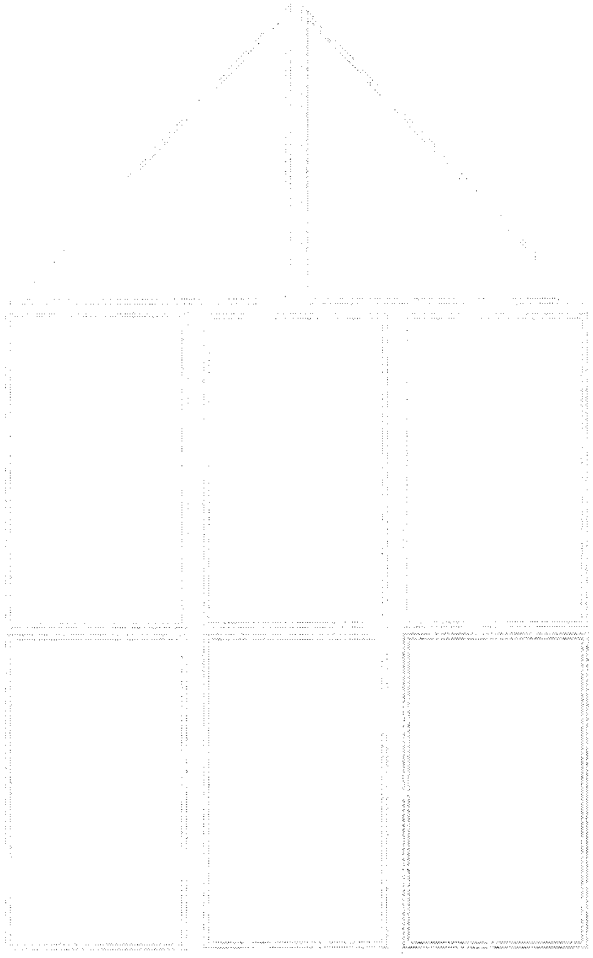
Buying Your Home

Settlement Costs and Helpful Information

U.S. Department of Housing and Urban Development
Office of Housing—Federal Housing Commissioner

BUYING YOUR HOME

Settlement Costs and Helpful Information



U.S. Department of Housing and Urban Development

June 1997

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I. Introduction

Congratulations! You have decided to buy a new home. This booklet will help you take this big financial step by describing the home buying, home financing, and settlement process. Lenders and mortgage brokers are required by federal law, the Real Estate Settlement Procedures Act ("RESPA"), to give you this booklet. You should receive it when applying for a loan, or within three business days afterwards. Real estate brokers frequently hand out this booklet as well.

You probably started the home buying process in one of two ways: you saw a home you were interested in buying or you consulted a lender to figure out how much money you could borrow before you found a home (sometimes called pre-qualifying). The next step is to sign an agreement of sale with the seller, followed by applying for a loan to purchase your new home. The final step is called "settlement" or "closing," where the legal title to the property is transferred to you.

At each of these steps you often have the opportunity to negotiate the terms, conditions and costs to your advantage. This booklet will highlight such opportunities. You will also need to shop carefully to get the best value for your money. There is no standard home buying process used in all localities. Your actual experience may vary from those described here. This booklet takes you through the general steps to buying a home, to eliminate, as much as possible, the mysteries of the settlement process.

II. BUYING AND FINANCING A HOME

A. Role of the Real Estate Broker

Frequently, the first person you consult about buying a home is a real estate agent or broker. Although real estate brokers provide helpful advice on many aspects of home buying, **they may serve the interests of the seller, and not your interests as the buyer.** The most common practice is for the seller to hire the broker to find someone who will be willing to buy the home on terms and conditions that are acceptable to the seller. Therefore, the real estate broker you are dealing with may also represent the seller. However, you can hire your own real estate broker, known as a buyer's broker, to represent your interests. Also, in some states, agents and brokers are allowed to represent both buyer and seller.

Even if the real estate broker represents the seller, state real estate licensing laws usually require that the broker treat you fairly. If you have any questions concerning the behavior of an agent or broker, you should contact your State's Real Estate Commission or licensing department.

Sometimes, the real estate broker will offer to help you obtain a mortgage loan. He or she may also recommend that you deal with a particular lender, title company, attorney or settlement/closing agent. You are not required to follow the real estate broker's recommendation. You should compare the costs and services offered by other providers with those recommended by the real estate broker.

B. Selecting an Attorney

Before you sign an agreement of sale, you might consider asking an attorney to look it over and tell you if it protects your interests. If you have already signed your agreement of sale, you might still consider having an attorney review it. An attorney can also help you prepare for the settlement. In some areas attorneys act as settlement/closing agents or as escrow agents to handle the settlement. **An attorney who does this will not solely represent your interests, since, as settlement/closing agent, he or she may also be representing the seller, the lender and others as well.**

Please note, in many areas of the country attorneys are not normally involved in the home sale. For example, escrow agents or escrow companies in western states handle the paperwork to transfer title without any attorney involvement.

If choosing an attorney, you should shop around and ask what services will be performed for what fee. Find out whether the attorney is experienced in representing home buyers. You may wish to ask the attorney questions such as:

- What is the charge for negotiating the agreement of sale, reviewing documents and giving advice concerning those documents, for being present at the settlement, or for reviewing instructions to the escrow agent or company?
- Will the attorney represent anyone other than you in the transaction?
- Will the attorney be paid by anyone other than you in the transaction?

C. Terms of the Agreement of Sale

If you receive this Booklet before you sign an agreement of sale, here are some important points to consider. The real estate broker probably will give you a preprinted form of agreement of sale. You may make changes or additions to the form agreement, but the seller must agree to every change you make. You should also agree with the seller on when you will move in and what appliances and personal property will be sold with the home.

- **Sales Price.** For most home purchasers, the sales price is the most important term. Recognize that other non-monetary terms of the agreement are also important.
- **Title.** "Title" refers to the legal ownership of your new home. The seller should provide title, free and clear of all claims by others against your new home. Claims by others against your new home are sometimes known as "liens" or "encumbrances." You may negotiate who will pay for the title search which will tell you whether the title is "clear."
- **Mortgage Clause.** The agreement of sale should provide that your deposit will be refunded if the sale has to be canceled because you are unable to get a mortgage loan. For example, your agreement of sale could allow the purchase to be canceled

if you cannot obtain mortgage financing at an interest rate at or below a rate you specify in the agreement.

Pests. Your lender will require a certificate from a qualified inspector stating that the home is free from termites and other pests and pest damage. You may want to reserve the right to cancel the agreement or seek immediate treatment and repairs by the seller if pest damage is found.

Home Inspection. It is a good idea to have the home inspected. An inspection should determine the condition of the plumbing, heating, cooling and electrical systems. The structure should also be examined to assure it is sound and to determine the condition of the roof, siding, windows and doors. The lot should be graded away from the house so that water does not drain toward the house and into the basement.

Most buyers prefer to pay for these inspections so that the inspector is working for them, not the seller. You may wish to include in your agreement of sale the right to cancel, if you are not satisfied with the inspection results. In that case, you may want to re-negotiate for a lower sale price or require the seller to make repairs.

Lead-Based Paint Hazards in Housing Built Before 1978. If you buy a home built before 1978, you have certain rights concerning lead-based paint and lead poisoning hazards. The seller or sales agent must give you the EPA pamphlet "Protect Your Family From Lead in Your Home" or other EPA-approved lead hazard information. The seller or sales agent must tell you what the seller actually knows about the home's lead-based paint or lead-based paint hazards and give you any relevant records or reports.

You have at least ten (10) days to do an inspection or risk assessment for lead-based paint or lead-based paint hazards. However, to have the right to cancel the sale based on the results of an inspection or risk assessment, you will need to negotiate this condition with the seller.

Finally, the seller must attach a disclosure form to the agreement of sale which will include a Lead Warning Statement. You, the seller, and the sales agent will sign an acknowledgment that these notification requirements have been satisfied.

- **Other Environmental Concerns.** Your city or state may have laws requiring buyers or sellers to test for environmental hazards such as leaking underground oil tanks, the presence of radon or asbestos, lead water pipes, and other such hazards, and to take the steps to clean-up any such hazards. You may negotiate who will pay for the costs of any required testing and/or clean-up.

- **Sharing of Expenses.** You need to agree with the seller about how expenses related to the property such as taxes, water and sewer charges, condominium fees, and utility bills, are to be divided on the date of settlement. Unless you agree otherwise, you should only be responsible for the portion of these expenses owed after the date of sale.

- **Settlement Agent/Escrow Agent or Company.** Depending on local practices, you may have an option to select the settlement agent or escrow agent or company. For states where an escrow agent or company will handle the settlement, the buyer, seller and lender will provide instructions.

- **Settlement Costs.** You can negotiate which settlement costs you will pay and which will be paid by the seller.

D. Shopping For a Loan

Your choice of lender and type of loan will influence not only your settlement costs, but also the monthly cost of your mortgage loan. There are many types of lenders and types of loans you can choose. You may be familiar with banks, savings associations, mortgage companies and credit unions, many of which provide home mortgage loans. You may find a listing of some mortgage lenders in the yellow pages or a listing of rates in your local newspaper.

Mortgage Brokers. Some companies, known as "mortgage brokers" offer to find you a mortgage lender willing to make you a loan. **A mortgage broker may operate as an independent business and may not be operating as your "agent" or representative.** Your mortgage broker may be paid by the lender, you as the borrower, or both. You may wish to ask about the fees that the mortgage broker will receive for its services.

Government Programs. You may be eligible for a loan insured through the Federal Housing Administration ("FHA") or guaranteed by the Department of Veterans Affairs or similar programs operated by cities or states. These programs usually require a smaller downpayment. Ask lenders about these programs. You can get more information about these programs from the agencies that run them. (See Appendix to this Booklet.)

CLOs. Computer loan origination systems, or CLOs, are computer terminals sometimes available in real estate offices or other locations to help you sort through the various types of loans offered by different lenders. The CLO operator may charge a fee for the services the CLO offers. This fee may be paid by you or by the lender that you select.

Types of Loans. Loans can have a fixed interest rate or a variable interest rate. Fixed rate loans have the same principal and interest payments during the loan term. Variable rate loans can have any one of a number of "indexes" and "margins" which determine how and when the rate and payment amount change. If you apply for a variable rate loan, also known as an adjustable rate mortgage ("ARM"), a disclosure and booklet required by the Truth in Lending Act will further describe the ARM. Most loans can be repaid over a term of 30 years or less. Most loans have equal monthly payments. The amounts can change from time to time on an ARM depending on changes in the interest rate. Some loans have short terms and a large final payment called a "balloon." You should shop for the type of home mortgage loan terms that best suit your needs.

Interest Rate, "Points" & Other Fees. Often the price of a home mortgage loan is stated in terms of an interest rate, points, and other fees. A "point" is a fee that equals 1 percent of the loan amount. Points are usually paid to the lender, mortgage broker, or both, at the settlement or upon the completion of the escrow. Often, you can pay fewer points in exchange for a higher interest rate or more points for a lower rate. Ask your lender or mortgage broker about points and other fees.

A document called the Truth in Lending Disclosure Statement will show you the "Annual Percentage Rate" ("APR") and other payment information for the loan you have applied for. The APR takes into account not only the interest rate, but also the points, mortgage broker fees and certain other fees that you have to pay. Ask for the APR before you apply to help you shop for the loan that is best for you. Also ask if your loan will have a charge or a fee for paying all or part of the loan before payment is due ("prepayment penalty"). You may be able to negotiate the terms of the prepayment penalty.

Lender-Required Settlement Costs. Your lender may require you to obtain certain settlement services, such as a new survey, mortgage insurance or title insurance. It may also order and charge you for other settlement-related services, such as the appraisal or credit report. A lender may also charge other fees, such as fees for loan processing, document preparation, underwriting, flood

certification or an application fee. You may wish to ask for an estimate of fees and settlement costs before choosing a lender. Some lenders offer "no cost" or "no point" loans but normally cover these fees or costs by charging a higher interest rate.

Comparing Loan Costs. Comparing APRs may be an effective way to shop for a loan. However, you must compare similar loan products for the same loan amount. For example, compare two 30-year fixed rate loans for $100,000. Loan A with an APR of 8.35% is less costly than Loan B with an APR of 8.65% over the loan term. However, before you decide on a loan, you should consider the up-front cash you will be required to pay for each of the two loans as well.

Another effective shopping technique is to compare identical loans with different up-front points and other fees. For example, if you are offered two 30-year fixed rate loans for $100,000 and at 8%, the monthly payments are the same, but the up-front costs are different:

Loan A - 2 points ($2,000) and lender required costs of $1800 = $3800 in costs.
Loan B - 2 1/4 points ($2250) and lender required costs of $1200 = $3450 in costs.

A comparison of the up-front costs shows Loan B requires $350 less in up-front cash than Loan A. However, your individual situation (how long you plan to stay in your house) and your tax situation (points can usually be deducted for the tax year that you purchase a house) may affect your choice of loans.

Lock-ins. "Locking in" your rate or points at the time of application or during the processing of your loan will keep the rate and/or points from changing until settlement or closing of the escrow process. Ask your lender if there is a fee to lock-in the rate and whether the fee reduces the amount you have to pay for points. Find out how long the lock-in is good, what happens if it expires, and whether the lock-in fee is refundable if your application is rejected.

Tax and Insurance Payments. Your monthly mortgage payment will be used to repay the money you borrowed plus interest. Part of your monthly payment may be deposited into an "escrow account" (also known as a "reserve" or "impound" account) so your lender or servicer can pay your real estate taxes, property insurance, mortgage insurance and/or flood insurance. **Ask your lender or mortgage broker if you will be required to set up an escrow or impound account for taxes and insurance payments.**

Transfer of Your Loan. While you may start the loan process with a lender or mortgage broker, you could find that after settlement another company may be collecting the payments on your loan. Collecting loan payments is often known as "servicing" the loan. Your lender or broker will disclose whether it expects to service your loan or to transfer the servicing to someone else.

Mortgage Insurance. Private mortgage insurance and government mortgage insurance protect the lender against default and enable the lender to make a loan which the lender considers a higher risk. Lenders often require mortgage insurance for loans where the downpayment is less than 20% of the sales price. You may be billed monthly, annually, by an initial lump sum, or some combination of these practices for your mortgage insurance premium. Ask your lender if mortgage insurance is required and how much it will cost. Mortgage insurance should not be confused with mortgage life, credit life or disability insurance, which are designed to pay off a mortgage in the event of the borrower's death or disability.

You may also be offered "lender paid" mortgage insurance ("LPMI"). Under LPMI plans, the lender purchases the mortgage insurance and pays the premiums to the insurer. The lender will increase your interest rate to pay for the premiums -- but LPMI may reduce your settlement costs. You cannot cancel LPMI or government mortgage insurance during the life of your loan. However, it may be possible to cancel private mortgage insurance at some point, such as when your loan balance is reduced to a certain amount. Before you commit to paying for mortgage insurance, find out the specific requirements for cancellation.

Flood Hazard Areas. Most lenders will not lend you money to buy a home in a flood hazard area unless you pay for flood insurance. Some government loan programs will not allow you to purchase a home that is located in a flood hazard area. Your lender may charge you a fee to check for flood hazards. You should be notified if flood insurance is required. If a change in flood insurance maps brings your home within a flood hazard area after your loan is made, your lender or servicer may require you to buy flood insurance at that time.

E. Selecting a Settlement Agent

Settlement practices vary from locality to locality, and even within the same county or city. Settlements may be conducted by lenders, title insurance companies, escrow companies, real estate brokers or attorneys for the buyer or seller. You may save money by shopping for the settlement agent.

In some parts of the country (particularly western states), settlement may be conducted by an escrow agent. The parties sign an escrow agreement which requires them to provide certain documents and funds to the agent. Unlike other types of settlement, the parties do not meet around a table to sign documents. Ask how your settlement will be handled.

F. Securing Title Services

Title insurance is usually required by the lender to protect the lender against loss resulting from claims by others against your new home. In some states, attorneys offer title insurance as part of their services in examining title and providing a title opinion. The attorney's fee may include the title insurance premium. In other states, a title insurance company or title agent directly provides the title insurance.

Owner's Policy. A lender's title insurance policy **does not protect you.** Similarly, the prior owner's policy does not protect you. If you want to protect yourself from claims by others against your new home, you will need an owner's policy. When a claim does occur, it can be financially devastating to an owner who is uninsured. If you buy an owner's policy, it is usually much less expensive if you buy it at the same time and with the same insurer as the lender's policy.

Choice of Title Insurer. Under RESPA, the seller may not require you, as a condition of the sale, to purchase title insurance from any particular title company. Generally, your lender will require title insurance from a company that is acceptable to it. In most cases you can shop for and choose a company that meets the lender's standards.

Review Initial Title Report. In many areas, a few days or weeks before the settlement or closing of the escrow, the title insurance company will issue a "Commitment to Insure" or preliminary report or "binder" containing a summary of any defects in title which have been identified by the title search, as well as any exceptions from the title insurance policy's coverage. The commitment is usually sent to the lender for use until the title insurance policy is issued at or

after the settlement. You can arrange to have a copy sent to you (or to your attorney) so that you can object if there are matters affecting the title which you did not agree to accept when you signed the agreement of sale.

Coverage & Cost Savings. To save money on title insurance, compare rates among various title insurance companies. Ask what services and limitations on coverage are provided under each policy so that you can decide whether coverage purchased at a higher rate may be better for your needs. However, in many states, title insurance premium rates are established by the state and may not be negotiable. If you are buying a home which has changed hands within the last several years, ask your title company about a "reissue rate," which would be cheaper. If you are buying a newly constructed home, make certain your title insurance covers claims by contractors. These claims are known as "mechanics' liens" in some parts of the country.

Survey. Lenders or title insurance companies often require a survey to mark the boundaries of the property. A survey is a drawing of the property showing the perimeter boundaries and marking the location of the house and other improvements. You may be able to avoid the cost of a complete survey if you can locate the person who previously surveyed the property and request an update. Check with your lender or title insurance company on whether an updated survey is acceptable.

G. RESPA Disclosures

One of the purposes of RESPA is to help consumers become better shoppers for settlement services. RESPA requires that borrowers receive disclosures at various times. Some disclosures spell out the costs associated with the settlement, outline lender servicing and escrow account practices and describe business relationships between settlement service providers.

Good Faith Estimate of Settlement Costs. RESPA requires that, when you apply for a loan, the lender or mortgage broker give you a Good Faith Estimate of settlement service charges you will likely have to pay. If you do not get this Good Faith Estimate when you apply, the lender or mortgage broker must mail or deliver it to you within the next three business days.

Be aware that the amounts listed on the Good Faith Estimate are only estimates. Actual costs may vary. Changing market conditions can affect prices. Remember that the lender's

estimate is not a guarantee. **Keep your Good Faith Estimate so you can compare it with the final settlement costs and ask the lender questions about any changes.**

Servicing Disclosure Statement RESPA requires the lender or mortgage broker to tell you in writing, when you apply for a loan or within the next three business days, whether it expects that someone else will be servicing your loan (collecting your payments).

Affiliated Business Arrangements Sometimes, several businesses that offer settlement services are owned or controlled by a common corporate parent. These businesses are known as "affiliates." When a lender, real estate broker, or other participant in your settlement refers you to an affiliate for a settlement service (such as when a real estate broker refers you to a mortgage broker affiliate), RESPA requires the referring party to give you an Affiliated Business Arrangement Disclosure. This form will remind you that you are generally not required, with certain exceptions, to use the affiliate and are free to shop for other providers.

HUD-1 Settlement Statement One business day before the settlement, you have the right to inspect the HUD-1 Settlement Statement. This statement itemizes the services provided to you and the fees charged to you. This form is filled out by the settlement agent who will conduct the settlement. Be sure you have the name, address, and telephone number of the settlement agent if you wish to inspect this form. The fully completed HUD-1 Settlement Statement generally must be delivered or mailed to you at or before the settlement. In cases where there is no settlement meeting, the escrow agent will mail you the HUD-1 after settlement, and you have no right to inspect it one day before settlement.

Escrow Account Operation & Disclosures Your lender may require you to establish an escrow or impound account to insure that your taxes and insurance premiums are paid on time. If so, you will probably have to pay an initial amount at the settlement to start the account and an additional amount with each month's regular payment. Your escrow account payments may include a "cushion" or an extra amount to ensure that the lender has enough money to make the payments when due. RESPA limits the amount of the cushion to a maximum of two months of escrow payments.

At the settlement or within the next 45 days, the person servicing your loan must give you an initial escrow account statement. That form will show all of the payments which are expected to be deposited into the escrow account and all of the disbursements which are expected to be made from the escrow account during the year ahead. Your lender or servicer will review the escrow account annually and send you a disclosure each year which shows the prior year's activity and any adjustments necessary in the escrow payments that you will make in the forthcoming year.

H. Processing Your Loan Application

There are several federal laws which provide you with protection during the processing of your loan. The Equal Credit Opportunity Act ("ECOA"), the Fair Housing Act, and the Fair Credit Reporting Act ("FCRA") prohibit discrimination and provide you with the right to certain credit information.

No Discrimination ECOA prohibits lenders from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, the fact that all or part of the applicant's income comes from any public assistance program, or the fact that the applicant has exercised any right under any federal consumer credit protection law. To help government agencies monitor ECOA compliance, your lender or mortgage broker must request certain information regarding your race, sex, marital status and age when taking your loan application.

The Fair Housing Act also prohibits discrimination in residential real estate transactions on the basis of race, color, religion, sex, handicap, familial status or national origin. This prohibition applies to both the sale of a home to you and the decision by a lender to give you a loan to help pay for that home. Finally, your locality or state may also have a law which prohibits discrimination.

Frequently, there are differences in the types and amounts of settlement costs charged to the borrower -- for example, some borrowers are charged greater fees for mortgages depending on their credit worthiness. These differences may be justified or they may be unlawfully discriminatory. It is important that you examine your settlement documents closely, especially lines 808-811 on the HUD-1 settlement statement, and do not hesitate to compare your settlement costs with those of your friends and neighbors.

If you feel you have been discriminated against by a lender or anyone else in the home buying process, you may file a private legal action against that person or complain to a state, local or federal administrative agency. You may want to talk to an attorney; or you may want to ask the federal agency that enforces ECOA (the Board of Governors of the Federal Reserve System) or the Fair Housing Act (HUD) about your rights under these laws.

Prompt Action/Notification of Action Taken Your lender or mortgage broker must act on your application and inform you of the action taken no later than 30 days after it receives your completed application. Your application will not be considered complete, and the 30 day period will not begin, until you provide to your lender or mortgage broker all of the material and information requested.

Statement of Reasons for Denial. If your application is denied, ECOA requires your lender or mortgage broker to give you a statement of the specific reasons why it denied your application or tell you how you can obtain such a statement. The notice will also tell you which federal agency to contact if you think the lender or mortgage broker has illegally discriminated against you.

Obtaining Your Credit Report. The Fair Credit Reporting Act ("FCRA") requires a lender or mortgage broker that denies your loan application to tell you whether it based its decision on information contained in your credit report. If that information was a reason for the denial, the notice will tell you where you can get a free copy of the credit report. You have the right to dispute the accuracy or completeness of any information in your credit report. If you dispute any information, the credit reporting agency that prepared the report must investigate free of charge and notify you of the results of the investigation.

Obtaining Your Appraisal. The lender needs to know if the value of your home is enough to secure the loan. To get this information, the lender typically hires an appraiser, who gives a professional opinion about the value of your home. ECOA requires your lender or mortgage broker to tell you that you have a right to get a copy of the appraisal report. The notice will also tell you how and when you can ask for a copy.

I. RESPA Protection Against Illegal Referral Fees

RESPA was enacted because Congress felt that consumers needed protection from "... unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country." Some of the practices Congress was concerned about are discussed below. Most professionals in the settlement business provide good service and do not engage in these practices.

Prohibited Fees. It is illegal under RESPA for anyone to pay or receive a fee, kickback or anything of value because they agree to refer settlement service business to a particular person or organization. For example, your mortgage lender may not pay your real estate broker $250 for referring you to the lender. It is also illegal for anyone to accept a fee or part of a fee for services if that person has not actually performed settlement services for the fee. For example, a lender may not add to a third party's fee, such as an appraisal fee, and keep the difference.

Permitted Payments. RESPA does not prevent title companies, mortgage brokers, appraisers, attorneys, settlement/closing agents and others, who actually perform a service in

connection with the mortgage loan or the settlement, from being paid for the reasonable value of their work. If a participant in your settlement appears to be taking a fee without having done any work, you should advise that person or company of the RESPA referral fee prohibitions. You may also speak with your attorney or complain to a regulator listed in the Appendix to this Booklet.

Penalties. It is a crime for someone to pay or receive an illegal referral fee. The penalty can be a fine, imprisonment or both. You may be entitled to recover three times the amount of the charge for any settlement service by bringing a private lawsuit. If you are successful, the court may also award you court costs and your attorney's fees.

J. Your Right to File Complaints

Private Lawsuits. If you have a problem, the best place to have it fixed is at its source (the lender, settlement agent, broker, etc.). If that approach fails and you think you have suffered because of a violation of RESPA, ECOA or any other law, you may be entitled to sue in a federal or state court. This is a matter you should discuss with your attorney.

Government Agencies. Most settlement service providers are supervised by a governmental agency at the local, state and/or federal level, some of which are listed in the Appendix to this Booklet. Your state's Attorney General may have a consumer affairs division. If you feel that a provider of settlement services has violated RESPA or any other law, you can complain to that agency or association. You may also send a copy of your complaint to the HUD Office of Consumer & Regulatory Affairs. The address is listed in the Appendix.

Servicing Errors. If you have a question any time during the life of your loan, RESPA requires the company collecting your loan payments (your "servicer") to respond to you. Write to your servicer and call it a "qualified written request under Section 6 of RESPA." A "qualified written request" should be a separate letter and not mailed with the payment coupon. Describe the problem and include your name and account number. The servicer must investigate and make appropriate corrections within 60 business days.

III. YOUR SETTLEMENT COSTS

A. Specific Settlement Costs

This part of the Booklet discusses the settlement services which you may be required to get and pay for and which are itemized in Section L of the HUD-1 Settlement Statement. You also will find a sample of the HUD-1 form to help you to understand the settlement transaction.

When shopping for settlement services, you can use this section as a guide, noting on it the possible services required by various lenders and the different fees quoted by service providers. Settlement costs can increase the cost of your loan, so compare carefully.

700. Sales/Broker's Commission: This is the total dollar amount of the real estate broker's sales commission, which is usually paid by the seller. This commission is typically a percentage of the selling price of the home.

L. SETTLEMENT CHARGES		
700. **TOTAL SALES/BROKER'S COMMISSION based on price $ @ %=**	PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
Division of Commission (line 700) as follows:		
701. $ to		
702. $ to		
703. Commission paid at Settlement		
704.		

800. Items Payable in Connection with Loan: These are the fees that lenders charge to process, approve and make the mortgage loan:

801. Loan Origination: This fee is usually known as a loan origination fee but sometimes is called a "point" or "points." It covers the lender's administrative costs in processing the loan. Often expressed as a percentage of the loan, the fee will vary among lenders. Generally, the buyer pays the fee, unless otherwise negotiated.

802. Loan Discount: Also often called "points" or "discount points," a loan discount is a one-time charge imposed by the lender or broker to lower the rate at which the lender or broker would otherwise offer the loan to you. Each "point" is equal to one percent of the mortgage

amount. For example, if a lender charges two points on a $80,000 loan this amounts to a charge of $1,600.

803. Appraisal Fee: This charge pays for an appraisal report made by an appraiser.

804. Credit Report Fee: This fee covers the cost of a credit report, which shows your credit history. The lender uses the information in a credit report to help decide whether or not to approve your loan and how much money to lend you.

805. Lender's Inspection Fee: This charge covers inspections, often of newly constructed housing, made by employees of your lender or by an outside inspector. (Pest or other inspections made by companies other than the lender are discussed in line 1302.)

806. Mortgage Insurance Application Fee: This fee covers the processing of an application for mortgage insurance.

807. Assumption Fee: This is a fee which is charged when a buyer "assumes" or takes over the duty to pay the seller's existing mortgage loan.

808. Mortgage Broker Fee: Fees paid to mortgage brokers would be listed here. A CLO fee would also be listed here.

800. ITEMS PAYABLE IN CONNECTION WITH LOAN			
801. Loan Origination Fee	%		
802. Loan Discount	%		
803. Appraisal Fee	to		
804. Credit Report	to		
805. Lender's Inspection Fee			
806. Mortgage Insurance Application Fee to			
807. Assumption Fee			
808. Mortgage Broker Fee			
809.			
810.			
811.			

900. Items Required by Lender to Be Paid in Advance: You may be required to prepay certain items at the time of settlement, such as accrued interest, mortgage insurance premiums and hazard insurance premiums.

901. Interest: Lenders usually require borrowers to pay the interest that accrues from the date of settlement to the first monthly payment.

902. Mortgage Insurance Premium: The lender may require you to pay your first year's mortgage insurance premium or a lump sum premium that covers the life of the loan, in advance, at the settlement.

903. Hazard Insurance Premium: Hazard insurance protects you and the lender against loss due to fire, windstorm, and natural hazards. Lenders often require the borrower to bring to the settlement a paid-up first year's policy or to pay for the first year's premium at settlement.

904. Flood Insurance: If the lender requires flood insurance, it is usually listed here.

900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			
901. Interest from to @$ /day			
902. Mortgage Insurance Premium for	months to		
903. Hazard Insurance Premium for	years to		
904.	years to		
905.			

1000 - 1008. Escrow Account Deposits: These lines identify the payment of taxes and/or insurance and other items that must be made at settlement to set up an escrow account. The lender is not allowed to collect more than a certain amount. The individual item deposits may overstate the amount that can be collected. The aggregate adjustment makes the correction in the amount on line 1008. It will be zero or a negative amount.

1000. RESERVES DEPOSITED WITH LENDER			
1001. Hazard Insurance	months @ $ per month		
1002. Mortgage insurance	months @ $ per month		
1003. City property taxes	months @ $ per month		
1004. County property taxes	months @ $ per month		
1005. Annual assessments	months @ $ per month		
1006.	months @ $ per month		
1007.	months @ $ per month		
1008. Aggregate Adjustment			

1100. Title Charges: Title charges may cover a variety of services performed by title companies and others. Your particular settlement may not include all of the items below or may include others not listed.

1101. Settlement or Closing Fee: This fee is paid to the settlement agent or escrow holder. Responsibility for payment of this fee should be negotiated between the seller and the buyer.

1102-1104. Abstract of Title Search, Title Examination, Title Insurance Binder: The charges on these lines cover the costs of the title search and examination.

1105. Document Preparation: This is a separate fee that some lenders or title companies charge to cover their costs of preparation of final legal papers, such as a mortgage, deed of trust, note or deed.

1106. Notary Fee: This fee is charged for the cost of having a person who is licensed as a notary public swear to the fact that the persons named in the documents did, in fact, sign them.

1107. Attorney's Fees: You may be required to pay for legal services provided to the lender, such as an examination of the title binder. Occasionally, the seller will agree in the agreement of sale to pay part of this fee. The cost of your attorney and/or the seller's attorney may also appear here. If an attorney's involvement is required by the lender, the fee will appear on this part of the form, or on lines 1111, 1112 or 1113.

1108. Title Insurance: The total cost of owner's and lender's title insurance is shown here.

1109. Lender's Title Insurance: The cost of the lender's policy is shown here.

1110. Owner's (Buyer's) Title Insurance: The cost of the owner's policy is shown here.

1100. **TITLE CHARGES**			
1101. Settlement or closing fee	to		
1102. Abstract or title search	to		
1103. Title examination	to		
1104. Title insurance binder	to		
1105. Document preparation	to		
1106. Notary fees to			
1107. Attorney's fees	to		
(includes above items numbers;	*)*		
1108. Title Insurance	to		
(includes above items numbers;	*)*		
1109. Lender's coverage	$		
1110. Owner's coverage	$		
1111.			
1112.			
1113.			

1200. Government Recording and Transfer Charges: These fees may be paid by you or by the seller, depending upon your agreement of sale with the seller. The buyer usually pays the fees for legally recording the new deed and mortgage (line 1201). Transfer taxes, which in some localities are collected whenever property changes hands or a mortgage loan is made, can be quite

large and are set by state and/or local governments. City, county and/or state tax stamps may have to be purchased as well (lines 1202 and 1203).

1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording fees: Deed $	; Mortgage $	; Releases $		
1202. City/county tax/stamps:	Deed $	; Mortgage $		
1203. State tax/stamps:	Deed $	; Mortgage $		
1204.				
1205.				

1300. Additional Settlement Charges:

1301. Survey: The lender may require that a surveyor conduct a property survey. This is a protection to the buyer as well. Usually the buyer pays the surveyor's fee, but sometimes this may be paid by the seller.

1302. Pest and Other Inspections: This fee is to cover inspections for termites or other pest infestation of your home.

1303-1305. Lead-Based Paint Inspections: This fee is to cover inspections or evaluations for lead-based paint hazard risk assessments and may be on any blank line in the 1300 series.

1300. ADDITIONAL SETTLEMENT CHARGES			
1301. Survey	to		
1302. Pest inspection	to		
1303.			
1304.			
1305.			

1400. Total Settlement Charges: The sum of all fees in the borrower's column entitled "Paid from Borrower's Funds at Settlement" is placed here. This figure is then transferred to line 103 of Section J, "Settlement charges to borrower" in the **Summary of Borrower's Transaction** on page 1 of the HUD-1 Settlement Statement and added to the purchase price. The sum of all of the settlement fees paid by the seller are transferred to line 502 of Section K, **Summary of Seller's Transaction** on page 1 of the HUD-1 Settlement Statement.

1400. TOTAL SETTLEMENT CHARGES *(enter on lines 103, Section J and 502, Section K)*		

Paid Outside Of Closing ("POC"): Some fees may be listed on the HUD-1 to the left of the borrower's column and marked "P.O.C." Fees such as those for credit reports and appraisals are usually paid by the borrower before closing/settlement. They are additional costs to you. Other fees such as those paid by the lender to a mortgage broker or other settlement service providers may be paid after closing/settlement. These fees are usually included in the interest rate or other settlement charge. They are not an additional cost to you. These types of fees will not be added into the total on Line 1400.

B. Calculating the Amount You Need At Settlement

The first page of the HUD-1 Settlement Statement summarizes all the costs and adjustments for the borrower and seller. Section J is the summary of the borrower's transaction and Section K is the summary of the seller's side of the transaction. You may receive a copy of the seller's side, but it is not required.

Section 100 summarizes the borrower's costs, such as the contract cost of the house, any personal property being purchased, and the total settlement charges owed by the borrower from Section L.

Beginning at line 106, adjustments are made for items (such as taxes, assessments, fuel) that the seller has previously paid. If you will benefit from these items after settlement, you will usually repay the seller for that portion of the cost.

Here is an example for you to use in making your own calculations:

J. SUMMARY OF BORROWER'S TRANSACTION		
100.	**GROSS AMOUNT DUE FROM BORROWER:**	
101.	Contract sales price	**100,000.00**
102.	Personal Property	
103.	Settlement charges to borrower (line 1400)	**4,000.00**
104.		
105.		
	Adjustments for items paid by seller in advance	
106.	City/town taxes to	
107.	County taxes to	
108.	Assessments **6/30** to **7/31 (owners assn.)**	**40.00**
109.	**Fuel Oil 25 gals. @ $1.00/gal.**	**25.00**
110.		

111.	
112.	
120. GROSS AMOUNT DUE FROM BORROWER	**104,065.00**

Assume in this example, the cost of the house is $100,000 and the borrower's total settlement charges brought from Line 1400 of Section L are $4,000. Assume that the settlement date is July 1. Here the borrower has agreed to pay the seller for the $40 Home Owners Association dues that have been paid for the month of July and for the 25 gallons of fuel oil left in the tank. This is added for a gross amount due from the borrower of $104,065.

Section 200 lists the amount paid by the borrower or on behalf of the borrower. This will include the deposit of earnest money you put down with the agreement of sale, the loan(s) you are getting and any loan you may be assuming.

Beginning at Line 210, adjustments are made for items that the seller owes (such as taxes, assessments) but for which you as the borrower will pay after settlement. The seller will usually pay you or credit you this portion at settlement.

200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		
201.	Deposit of earnest money	**2,000.00**
202.	Principal amount of new loan(s)	**80,000.00**
203.	Existing loan(s) taken subject to	
204.		
205.		
206.		
207.		
208.		
209.		
	Adjustments for items unpaid by seller	
210.	City/town taxes to	
211.	County taxes **1/1 to 6/30 $1,200/year**	**600.00**
212.	Assessments **1/1 to 6/30 $200/yr.**	**100.00**
213.		
214.		
215.		
216.		
217.		
218.		
219.		
220.	**TOTAL PAID BY/FOR BORROWER**	**82,700.00**

In this example, assume the borrower paid an earnest deposit of $2,000 and is getting a loan for $80,000. A tax of $1200 and an assessment of $200 are due at the end of the year. The seller will pay the borrower for six months or one-half of this amount. Line 220 shows the total $82,700 to be paid by or for the borrower.

Section 300 reflects the difference between the gross amount due from the borrower and the total amount paid by/for the borrower. Generally, line 303 will show the amount of cash the borrower must bring to settlement.

300. CASH AT SETTLEMENT FROM/TO BORROWER		
301.	Gross Amount due from borrower (line 120)	104,065.00
302.	Less amounts paid by/for borrower (line 220)	(82,700.00)
303.	**CASH (☒ FROM) (☐ TO) BORROWER**	**21,365.00**

In this example, the borrower must bring $21,365.00 to settlement.

C. Adjustments To Costs Shared By Buyer and Seller

At settlement it is usually necessary to make an adjustment between buyer and seller for property taxes and other expenses. The adjustments between buyer and seller are shown in Sections J and K of the HUD-1 Settlement Statement. In the example given above, the taxes, which are payable annually, had not yet been paid when the settlement occurs on July 1. The borrower will have to pay a whole year's taxes on the following December 1. However, the seller lived in the house for the first six months of the year. Thus, one half of the year's taxes are to be paid by the seller. Accordingly, lines 211 and 511 on the HUD-1 Settlement Statement would read as follows:

211. County taxes	1/1/97	to	6/30/97	$600.00

511. County taxes	1/1/97	to	6/30/97	$600.00

The borrower is given credit for this amount at the settlement and the seller will pay this amount or count it as a deduction from sums payable to the seller.

Similar adjustments are made for homeowner association dues, special assessments, and fuel and other utilities, although the billing periods for these may not always be on an annual basis. Be sure you work out these cost sharing arrangements or "prorations" with the seller before the settlement. You may wish to notify utility companies of the change in ownership and ask for a special reading on the day of settlement, with the bill for pre-settlement charges to be mailed to the seller at his or her new address or to the settlement agent. This will eliminate much confusion that can result if you are billed for utilities used when the seller owned the property.

D. HUD-1 Settlement Statement

A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			SETTLEMENT STATEMENT	
B. TYPE OF LOAN			6. File Number	7. Loan Number
	1. ☐ FHA	2. ☐ FmHA		
3. ☐ CONV. UNINS.	4. ☐ VA	5. ☐ CONV. INS.	8. Mortgage Insurance Case Number	

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME AND ADDRESS OF BORROWER:	E. NAME AND ADDRESS OF SELLER:	F. NAME AND ADDRESS OF LENDER:
G. PROPERTY LOCATION:	H. SETTLEMENT AGENT: NAME, AND ADDRESS	
	PLACE OF SETTLEMENT:	I. SETTLEMENT DATE:

J. SUMMARY OF BORROWER'S TRANSACTION		
100. GROSS AMOUNT DUE FROM BORROWER:		
101. Contract sales price		
102. Personal property		
103. Settlement charges to borrower(line 1400)		
104.		
105.		
Adjustments for items paid by seller in advance		
106. City/town taxes	to	
107. County taxes	to	
108. Assessments	to	
109.		
110.		
111.		
112.		
120. GROSS AMOUNT DUE FROM BORROWER		

K. SUMMARY OF SELLER'S TRANSACTION		
400. GROSS AMOUNT DUE TO SELLER:		
401. Contract sales price		
402. Personal property		
403.		
404.		
405.		
Adjustments for items paid by seller in advance		
406. City/town taxes	to	
407. County taxes	to	
408. Assessments	to	
409.		
410.		
411.		
412.		
420. GROSS AMOUNT DUE TO SELLER		

200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		
201. Deposit of earnest money		
202. Principal amount of new loan(s)		
203. Existing loan(s) taken subject to		
204.		
205.		
206.		
207.		
208.		
209.		
Adjustments for items unpaid by seller		
210. City/town taxes	to	
211. County taxes	to	
212. Assessments	to	
213.		
214.		
215.		
216.		
217.		
218.		
219.		
220. TOTAL PAID BY/FOR BORROWER		

500. REDUCTIONS IN AMOUNT DUE TO SELLER:		
501. Excess deposit (see instructions)		
502. Settlement charges to seller (line 1400)		
503. Existing loan(s) taken subject to		
504. Payoff of first mortgage loan		
505. Payoff of second mortgage loan		
506.		
507.		
508.		
509.		
Adjustments for items unpaid by seller		
510. City/town taxes	to	
511. County taxes	to	
512. Assessments	to	
513.		
514.		
515.		
516.		
517.		
518.		
519.		
520. TOTAL REDUCTION AMOUNT DUE SELLER		

300. CASH AT SETTLEMENT FROM/TO BORROWER	
301. Gross amount due from borrower(line 120)	
302. Less amounts paid by/for borrower(line 220)	
303. CASH (☐ FROM) (☐ TO) BORROWER	

600. CASH AT SETTLEMENT TO/FROM SELLER	
601. Gross amount due to seller (line 420)	
602. Less reductions in amount due seller (line 520)	
603. CASH (☐ TO) (☐ FROM) SELLER	

L. SETTLEMENT CHARGES		
700. **TOTAL SALES/BROKER'S COMMISSION based on price $ @ %=**	PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
Division of Commission (line 700) as follows:		
701. $ to		
702. $ to		
703. Commission paid at Settlement		
704.		
800. **ITEMS PAYABLE IN CONNECTION WITH LOAN**		
801. Loan Origination Fee %		
802. Loan Discount %		
803. Appraisal Fee to		
804. Credit Report to		
805. Lender's Inspection Fee		
806. Mortgage Insurance Application Fee to		
807. Assumption Fee		
808.		
809.		
810.		
811.		
900. **ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE**		
901. Interest from to @$ /day		
902. Mortgage Insurance Premium for months to		
903. Hazard Insurance Premium for years to		
904. years to		
905.		
1000. **RESERVES DEPOSITED WITH LENDER**		
1001. Hazard Insurance months @ $ per month		
1002. Mortgage insurance months @ $ per month		
1003. City property taxes months @ $ per month		
1004. County property taxes months @ $ per month		
1005. Annual assessments months @ $ per month		
1006. months @ $ per month		
1007. months @ $ per month		
1008. Aggregate Adjustment months @ $ per month		
1100. **TITLE CHARGES**		
1101. Settlement or closing fee to		
1102. Abstract or title search to		
1103. Title examination to		
1104. Title insurance binder to		
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's fees to		
(includes above items numbers;)		
1108. Title Insurance to		
(includes above items numbers;)		
1109. Lender's coverage $		
1110. Owner's coverage $		
1111.		
1112.		
1113.		
1200. **GOVERNMENT RECORDING AND TRANSFER CHARGES**		
1201. Recording fees: Deed $; Mortgage $; Releases $		
1202. City/county tax/stamps: Deed $; Mortgage $		
1203. State tax/stamps: Deed $; Mortgage $		
1204.		
.1205.		
1300. **ADDITIONAL SETTLEMENT CHARGES**		
1301. Survey to		
1302. Pest inspection to		
1303.		
1304.		
1305.		
1400. **TOTAL SETTLEMENT CHARGES** *(enter on lines 103, Section J and 502, Section K)*		

Consumer Information on Home Purchasing and Related Topics

U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410
Web site: http://www.hud.gov

For information about FHA-insured home mortgage loans on one-to-four family dwellings call:

1-800 CALL FHA (800-225-5342)

For information about buying a HUD home call:

1-800-767-4HUD (800-767-4483)

For consumer counseling referrals call:
1-888-HOME4US (1-888-466-3487)

For information regarding housing discrimination issues contact:

Office of Fair Housing and Equal Opportunity (see above HUD address)
1-800-669-9777
Web site: http://www.hud.gov/fhe/fheo.html

For information about RESPA contact:

Office of Consumer and Regulatory Affairs (see above HUD address)
Web Site: http://www.hud.gov/fha/res/respa_hm.html

Other Agencies

For information about programs and pamphlets offered by the Department of Veterans Affairs, contact your nearest VA Regional Office.
Web Site: http://www.va.gov/vas/loan

For information about rural housing loan programs contact:

Department of Agriculture
Rural Development/Rural Housing Services
Stop 0783
Washington, DC 20250
Web Site: http://www.rurdev.usda.gov

For information about the Truth in Lending Act and the Equal Credit Opportunity Act contact:

Federal Reserve Board
20th Street and Constitution Avenue, NW
Washington, DC 20551
http://www.bog.frb.fed.us

[FR Doc. 97–15301 Filed 6–10–97; 8:45 am]
BILLING CODE 4210–27–C

federal register

Wednesday
June 11, 1997

Part VII

The President

Presidential Determination No. 97–26—Presidential Certification to Waive Prohibition on Assistance to the Federal Republic of Yugoslavia (Serbia and Montenegro)

Presidential Determination No. 97–27—Presidential Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974, as Amended—Emigration Policies of Armenia, Azerbaijan, Georgia, Moldova, and Ukraine

Presidential Determination No. 97–28—Presidential Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Federal Register
Vol. 62, No. 112
Wednesday, June 11, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 97–26 of May 30, 1997

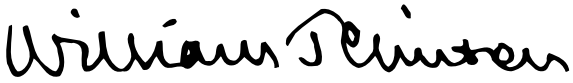
Presidential Certification to Waive Prohibition on Assistance to the Federal Republic of Yugoslavia (Serbia and Montenegro)

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the laws of the United States, including section 1511 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) and section 540 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (contained in Public Law 104–208 (the ''Act'')), I hereby certify to the Congress that I have determined that the waiver of the application of the prohibition in section 1511(b) of Public Law 103–160 and of the application of section 540(a) of the Act is necessary to achieve a negotiated settlement of the conflict in Bosnia and Herzegovina that is acceptable to the parties, to the extent that such provisions apply to the furnishing of assistance to facilitate destruction of military equipment.

Therefore, I hereby waive the application of these provisions with respect to such assistance.

You are authorized and directed to transmit a copy of this determination to the Congress and arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 30, 1997.

[FR Doc. 97–15460
Filed 6–10–97; 8:45 am]
Billing code 4710–10–M

Presidential Documents

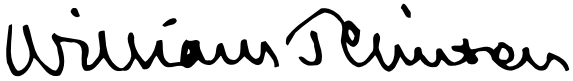
Presidential Determination No. 97–27 of June 3, 1997

Presidential Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974, as Amended—Emigration Policies of Armenia, Azerbaijan, Georgia, Moldova, and Ukraine

Memorandum for the Secretary of State

Pursuant to the authority vested in me by subsections 402(a) and 409(a) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2439(a) (the ''Act'')), I determine that Armenia, Azerbaijan, Georgia, Moldova, and Ukraine are not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2), or (3) of subsection 409(a) of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 3, 1997.

[FR Doc. 97–15461
Filed 6–10–97; 8:45 am]
Billing code 4710–10–M

Presidential Documents

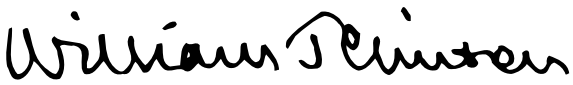
Presidential Determination No. 97–28 of June 3, 1997

Presidential Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to subsection 402(d)(1) of the Trade Act of 1974, as amended (the ''Act''), I determine that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to Albania, Belarus, Kazakstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**



THE WHITE HOUSE,
Washington, June 3, 1997.

[FR Doc. 97–15462
Filed 6–10–97; 8:45 am]
Billing code 4710–10–M

Reader Aids

Federal Register

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CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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