9–17–97
Vol. 62 No. 180
Pages 48731–48934

federal register

Wednesday
September 17, 1997

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Contents

Federal Register

Vol. 62, No. 180

Wednesday, September 17, 1997

Agency for Health Care Policy and Research
NOTICES
Meetings:
User Liaison Program Mail Key Support Services Contract Technical Review Committee, 48869

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Bunker Hill, ID; expert workshop regarding medical monitoring, 48869–48870

Agricultural Marketing Service
RULES
Peanuts, domestically produced, 48749–48751

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Federal Crop Insurance Corporation

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Exotic Newcastle disease; disease status change—Northern Ireland and Norway, 48751–48752
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—State and area classifications, 48751

Army Department
NOTICES
Environmental statements; availability, etc.:
Joint vaccine acquisition program, 48823
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Composite material properties data, 48823

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Assisted reproductive technology programs; pregnancy success rates reporting requirements; document availability and comment request; correction, 48921
Meetings:
National Center for Environmental Health, 48870
Tuberculosis Elimination Advisory Council, 48870

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Alaska, 48810
Kansas, 48810–48811
Vermont, 48811

Coast Guard
RULES
Merchant marine officers and seamen:
Tankermen and persons in charge of dangerous liquids and liquefied gases transfers; qualifications—Compliance date delayed and comment request, 48769–48770
Pollution:
Cargo tanks; overfill devices; minimum standards, 48770–48773
Regattas and marine parades:
Chesapeake Airshow, 48768–48769
Ducks on the Ohio, 48767–48768
First Coast Guard District fireworks displays, 48766–48767
Fleur De Lis regatta, 48765–48766

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office

Consumer Product Safety Commission
RULES
Privacy Act; implementation, 48756

Copyright Office, Library of Congress
NOTICES
Cable royalty funds:
Secondary transmission by cable systems, 1995 distribution; comment request, 48894–48895

Council on Environmental Quality
NOTICES
American Heritage Rivers initiative; environmental, historic, and economic programs and services; comment request, 48860–48868

Defense Department
See Army Department
See Navy Department
RULES
Federal Acquisition Regulation (FAR):
Certificates of competency
Correction, 48921

Delaware River Basin Commission
NOTICES
Hearings, 48826–48827

Education Department
PROPOSED RULES
Special education and rehabilitative services:
Individuals with Disabilities Education Act Amendments of 1997—
Statutory requirements implementation; meetings, 48924–48925

Employment and Training Administration
NOTICES
Adjustment assistance:
BJ Services Co., U.S.A., et al., 48889–48890
Craddock-Terry, Inc., 48890
Doran Textiles, Inc., et al., 48890
Schmid Laboratories et al., 48890–48891
Adjustment assistance and NAFTA transitional adjustment assistance:
Pioneer Electronics Technology, Inc. et al., 48887–48889
NAFTA transitional adjustment assistance:
Milaca Mills, Inc., 48891
Port Clyde Canning et al., 48891–48893
Sun Apparel, Inc., 48893

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
NOTICES
Meetings:
Clean Air Act Advisory Committee, 48836
Pesticide, food and feed additive petitions:
AgrEvo USA Co. et al., 48837–48842
Dow Elanco et al., 48842–48848
DowElanco Products Co. et al., 48848–48856
E.I. du Pont de Nemours & Co., 48856–48859
Pesticide registration, cancellation, etc.:
Bayer Corp. et al., 48836–48837
Reports and guidance documents; availability, etc:
National performance measures strategy, 48859–48860

Environmental Quality Council
See Council on Environmental Quality

Executive Office of the President
See Council on Environmental Quality
See Management and Budget Office
See Presidential Documents
See Trade Representative, Office of United States

Farm Service Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 48810

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 48754–48755
PROPOSED RULES
Airworthiness directives:
Pratt & Whitney, 48799–48802
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 48918

Federal Communications Commission
RULES
Common carrier services:
Telephone number portability; policy and technical issues, 48774–48787
Unauthorized changes of consumer's long distance carriers (slamming); policies and rules
Correction, 48787
Practice and procedure:
Regulatory fees (1997); assessment and collection
Correction, 48773–48774
Radio services, special:
Fixed microwave services—
Local multipoint distribution service; 28 GHz and 31 GHz bands use, 48787–48797
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 48868

Federal Crop Insurance Corporation
PROPOSED RULES
Administrative regulations:
Federal crop insurance program—
Nonstandard underwriting classification system, 48798–48799

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
San Diego Gas & Electric Co. et al., 48832–48835
Environmental statements; availability, etc.:
Crown Hydro Co., MN, 48835–48836
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 48827
Colorado Interstate Gas Co., 48827–48828
Columbia Power Marketing Corp., 48828
Dauphin Island Gathering Partners, 48828
EnergyEXPRESS, Inc., 48828–48829
Friendly Power Co. LLC, 48829
GPU Advanced Resources, Inc., 48829
NorAm Gas Transmission Co., 48829–48830
Northern Natural Gas Co., 48830
Northwest Pipeline Corp., 48831
Pacific Interstate Transmission Co., 48831
Sumas International Pipeline, Inc., 48831
Tennessee Gas Pipeline Co., 48831–48832
Tucson Electric Power Co., 48832
Western Gas Interstate Co., 48832

Federal Reserve System
RULES
Availability of funds and collection of checks (Regulation CC):
Miscellaneous amendments
Correction, 48752–48754
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 48868–48869
Meetings; Sunshine Act; correction, 48921

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 48880
Marine mammals permit applications, 48880–48881

Food and Drug Administration
RULES
Organization, functions, and authority delegations:
Deputy Commissioner for Policy et al., 48756–48757
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 48870–48871

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Certificates of competency
Correction, 48921

Geological Survey
NOTICES
Grants and cooperative agreements; availability, etc.:
E.I. Dupont; selected sulfonylurea herbicides in midwestern U.S. water resources; occurrence assessment, 48881

Government Ethics Office
RULES
Government ethics:
Superseded references to former honorarium ban removed and other technical amendments, 48746–48748

Health and Human Services Department
See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 48871
Medicare and Medicaid:
Organ procurement organizations (OPOs) in designated areas; hospitals requesting waivers; list, 48872–48873

Indian Affairs Bureau
NOTICES
Irrigation projects; operation and maintenance charges:
San Carlos Irrigation Project, AZ, 48882

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 48873–48878

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

International Trade Administration
NOTICES
Antidumping:
Stainless steel bar from—
India, 48811
Countervailing duties:
Pure and alloy magnesium from—
Canada, 48812–48817
Applications, hearings, determinations, etc.:
University of—
Utah, et al., 48811–48812

Justice Department
See Justice Programs Office
NOTICES
Meetings:
President's Advisory Board on Race, 48886
Pollution control; consent judgments:
Waste Management of Kentucky, Inc., et al., 48886

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 48886–48887

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Calista Corp., 48882–48883
Environmental statements; availability, etc.:
Gillette South Coalbed Methane Project, WY, 48883
Meetings:
Resource advisory councils—
Ukiah, 48883–48884

Library of Congress
See Copyright Office, Library of Congress

Management and Budget Office
NOTICES
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-Hollings):
Sequestration update report; transmittal to President and Congress, 48905
Budget rescissions and deferrals
Cumulative reports, 48905–48909

Minerals Management Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 48884–48885

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Certificates of competency
Correction, 48921

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities:
Proposed collection; comment request, 48895
Meetings:
Combined Arts Advisory Panel, 48895–48896

National Institute of Standards and Technology
PROPOSED RULES
Advanced technology program; policy and procedures, 48802–48807

National Institutes of Health
NOTICES
Meetings:
Heroin addiction, effective medical treatment; consensus development conference, 48878–48879
National Cancer Institute, 48879–48880
National Institute of Nursing Research, 48880

National Oceanic and Atmospheric Administration
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Coastal Oil & Gas Corp.; bottlenose and spotted dolphins, 48817
U.S. Geological Survey; seismic hazards investigations in Puget Sound, 48817–48820
Meetings:
South Atlantic Fishery Management Council, 48820–48821
Permits:
Marine mammals, 48821–48822

National Science Foundation
NOTICES
Meetings:
Cross Disciplinary Activities Special Emphasis Panel, 48896
Geosciences Advisory Committee, 48897
Mathematical Sciences Special Emphasis Panel, 48897
Networking & Communications Research & Infrastructure Special Emphasis Panel, 48897

National Telecommunications and Information Administration
NOTICES
Meetings:
Spectrum Planning and Policy Advisory Committee, 48822

Navy Department
NOTICES
Environmental statements; availability, etc.:
Navy submarine solid waste disposal, 48823–48825
International Convention for Prevention of Pollution from Ships (MARPOL) Annex V:
Submarine and ship solid waste management; draft plan availability, 48826

Nuclear Regulatory Commission
NOTICES
Reports and guidance documents; availability, etc.:
Materials licenses, consolidated guidance, and industrial radiography licenses, 48904–48905
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 48897–48899
Commonwealth Edison Co., 48899–48903
Mallinckrodt Medical, Inc., 48903–48904

Office of Management and Budget
See Management and Budget Office

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

Patent and Trademark Office
NOTICES
Senior Executive Service:
Performance Review Board; membership, 48823

Pension and Welfare Benefits Administration
NOTICES
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 48893–48894

Personnel Management Office
RULES
Group life insurance, Federal employees:
Merger of life insurance regulations, 48731–48746

Presidential Documents
PROCLAMATIONS
Special observances:
Food Recovery, National Week of (proc. 7019), 48929–48930
Hispanic Heritage Month, National (proc. 7020), 48931–48932
National Security Act of 1947, 50th Anniversary of the (proc. 7021), 48933–48934

Public Health Service
See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Reclamation Bureau
NOTICES
Environmental statements; notice of intent:
CALFED Bay-Delta program, CA, 48885–48886

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 48911–48912
Securities:
Suspension of trading—
Legend Sports, Inc., 48912
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 48912–48913
Participants Trust Co., 48913–48914
Philadelphia Stock Exchange, Inc., 48914–48916
Applications, hearings, determinations, etc.:
Great American Reserve Variable Account D, 48910–48911
Great American Reserve Variable Annuity Fund, 48910
New York Times Co., 48911

Small Business Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 48916

State Department
RULES
Freedom of Information Act; implementation:
Information and records availability; time limits for responding to and consideration of requests for expedited processing, 48757–48758

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Virginia, 48758–48765
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
North Dakota, 48807–48809

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Boston & Maine Corp., 48918–48919
Paducah & Louisville Railway, 48919
Union Pacific Railroad Co., 48919–48920

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

Trade Representative, Office of United States
NOTICES
World Trade Organization:
Dispute settlement panel establishment requests—
Indonesia; automobile industry measures, 48916–48917

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 48917–48918

Separate Parts In This Issue

Part II
Department of Education, 48924–48925

Part III
The President, 48929–48934

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7019 48929
7020 48931
7021 48933

5 CFR

870 48731
871 48731
872 48731
873 48731
874 48731
2634 48746
2635 48746

7 CFR

997 48749
998 48749

Proposed Rules:

Ch. IV 48798

9 CFR

78 48751
94 48751

12 CFR

229 48752

14 CFR

39 48754

Proposed Rules:

39 48799

15 CFR

Proposed Rules:

295 48802

16 CFR

1014 48756

21 CFR

5 48756

22 CFR

171 48757

30 CFR

946 48758

Proposed Rules:

934 48807

33 CFR

100 (4 documents) 48765, 48766, 48767, 48768
155 (2 documents) 48769, 48770
156 48770

34 CFR

Proposed Rules:

300 48924
301 48924
303 48924

47 CFR

1 48773
52 48774
64 48787
101 48787

48 CFR

9 48921
19 48921

Rules and Regulations

Federal Register
Vol. 62, No. 180
Wednesday, September 17, 1997

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, 873, and 874

RIN 3206–AF32, 3206–AG79, 3206–AG68

Federal Employees' Group Life Insurance Program: Merger of Life Insurance Regulations; Living Benefits; Assignment of Life Insurance

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to combine the five parts of title 5 of the Code of Federal Regulations relating to the Federal Employees' Group Life Insurance (FEGLI) Program and to simplify the language of the regulations. This will ease administration and aid in understanding the Program. We also are issuing final regulations to implement the FEGLI Living Benefits Act and assignment of life insurance.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, 202–606–0004.

SUPPLEMENTARY INFORMATION: On May 3, 1995, OPM published proposed regulations (60 FR 21759), merging the five parts of title 5 of the Code of Federal Regulations relating to the Federal Employees' Group Life Insurance Program. The merger deletes parts 871, 872, 873, and 874 and combines the information now contained in those parts into an expanded part 870. This results in a complete presentation of material in one place.

In addition to merging the regulations, we reorganized the material; incorporated some material formerly found in Federal Personnel Manual (FPM) Supplement 870–1, which was abolished as of December 31, 1994; and simplified the language to make the regulations easier to understand.

We received one comment from a retiree organization, which expressed approval of the consolidation and the simplified language.

We made changes to reflect statutory changes since the proposed regulations were prepared and made other minor language modifications and clarifications.

On June 15, 1995, OPM published interim regulations (60 FR 31371), implementing Pub. L. 103–409, the FEGLI Living Benefits Act, which permits terminally ill individuals covered by FEGLI to elect a lump sum payment of their Basic insurance as a living benefit.

We received one comment from an individual who suggested allowing covered individuals to make such an election prior to their becoming terminally ill and allowing someone other than the insured to make the election. The Living Benefits Act states that terminally ill individual may elect a Living Benefit. Terminally ill is defined as having a life expectancy of 9 months or less. Therefore, OPM does not have the statutory authority to permit such elections prior to an individual's being diagnosed as terminally ill. We reviewed the requirement that only the insured may elect a Living Benefit. At the present time we are not experiencing a problem in this area. However, we will continue to monitor the situation to determine whether any changes should be made in the future.

We made one significant change to the Living Benefits regulations. The interim regulations state that if an individual elects a Living Benefit, he/she cannot then assign any remaining insurance. We reevaluated that position and have revised the regulations to state that an individual *can* assign his/her remaining insurance (if any) following a Living Benefit election. We also made changes in numbering and language to conform the Living Benefits regulations to the order and style of the merged regulations.

On October 4, 1995, OPM published interim regulations (60 FR 51881), implementing Section 4 of Public Law 103–336, which permits all insured Federal employees and former employees to irrevocably assign ownership of their FEGLI insurance. Previously, only judges could assign ownership of their insurance.

We received one comment from a Federal agency asking whether the reference to ''other person(s)'' was intended to prevent the assignee from designating a corporation as a contingent beneficiary and also suggesting that the regulations include instructions concerning procedures for reassigning the insurance. The regulations in place at the time included a ''corporation'' in the definition of ''person.'' The definition of ''assignment'' also specifically includes transfer of ownership to a corporation. We do not believe that regulations are the appropriate forum for detailed instructions. Instructions more properly belong in handbooks, operating manuals, and other guidance to agencies.

The commentor also suggested some perfecting language changes. We accepted some of these suggestions. We also made changes in numbering and language to conform the assignment regulations to the order and style of the merged regulations.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, because the regulations will affect only Federal employees, annuitants, and compensationers.

List of Subjects in 5 CFR Parts 870, 871, 872, 873 and 874

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

U.S. Office of Personnel Management.

Janice R. Lachance,

Acting Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, as follows:

1. Part 870 is revised to read as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

Subpart A—Administration and General Provisions

Sec.

870.101 Definitions.
870.102 The policy
870.103 Correction of errors.
870.104 Initial decision and reconsideration.

Subpart B—Types and Amount of Insurance

870.201 Types of insurance.
870.202 Basic insurance amount (BIA).
870.203 Post-election BIA.
870.204 Annual rates of pay.
870.205 Amount of Optional insurance.
870.206 Accidental death and dismemberment.

Subpart C—Eligibility

870.301 Eligibility for life insurance.
870.302 Exclusions.

Subpart D—Cost of Insurance

870.401 Withholdings and contributions for Basic insurance.
870.402 Withholdings for Optional insurance.
870.403 Withholdings and contributions following a Living Benefit election.
870.404 Withholdings and contributions provisions that apply to both Basic and Optional insurance.
870.405 Direct premium payments under 5 U.S.C. chapter 84 (Federal Employees' Retirement System—FERS).

Subpart E—Coverage

870.501 Basic insurance: effective dates of automatic coverage.
870.502 Basic insurance: waiver/cancellation of insurance.
870.503 Basic insurance: cancelling a waiver.
870.504 Optional insurance: election.
870.505 Optional insurance: waiver/cancellation of insurance.
870.506 Optional insurance: cancelling a waiver.
870.507 Open enrollment periods.
870.508 Nonpay status.
870.509 Transfers to international organizations.

Subpart F—Termination and Conversion

870.601 Termination of Basic insurance.
870.602 Termination of Optional insurance.
870.603 Conversion of Basic and Optional insurance.

Subpart G—Annuitants and Compensationers

870.701 Eligibility for life insurance.
870.702 Election of Basic insurance.
870.703 Amount of life insurance.
870.704 Reinstatment of life insurance.
870.705 Reemployed annuitants.
870.706 MRA-plus-10 annuitants.

Subpart H—Order of Precedence and Designation of Beneficiary

870.801 Order of precedence and payment of benefits.
870.802 Designation of beneficiary.
870.803 Child incapable of self-support.

Subpart I—Assignments of Life Insurance.

870.901 Assignments permitted.
870.902 Making an assignment.
870.903 Effective date of assignment.
870.904 Amount of insurance.
870.905 Withholdings.
870.906 Cancellation of insurance.
870.907 Termination and conversion.
870.908 Annuitants and compensationers.
870.909 Designations and changes of beneficiary.
870.910 Notification of current addresses.

Subpart J—Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon

870.1001 Purpose.
870.1002 Definitions.
870.1003 Coverage and amount of insurance.
870.1004 Effective date of insurance.
870.1005 Premiums.
870.1006 Cancellation of insurance.
870.1007 Termination and conversion.
870.1008 Order of precedence and designation of beneficiary.
870.1009 Responsibilities of the U.S. Department of State.

Subpart K—Living Benefits

870.1101 Eligibility for a Living Benefit.
870.1102 Amount of a Living Benefit.
870.1103 Election procedures.

Authority: 5 U.S.C. 8716.

Subpart A—Administration and General Provisions

§ 870.101 Definitions.

Annuitant means a former employee entitled to an annuity under a retirement system established for employees. This includes the retirement system of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard.

Assign and *assignment* refer to an individual's irrevocable transfer to another individual, corporation, or trustee all ownership of FEGLI coverage (except Option C).

Assignee means the individual, corporation, or trustee to which an individual irrevocably transfers ownership of FEGLI coverage (except Option C).

Child, as used in the definition of *family member for Option C coverage,* means a legitimate child, an adopted child, a stepchild who lives with the employee or former employee in a regular parent-child relationship, or a recognized natural child. It does not include a stillborn child, a grandchild, or a foster child. The child must be under age 22 or, if age 22 or over, must be incapable of self-support because of a mental or physical disability which existed before the child reached age 22.

Child, as used in the *order of precedence for payment of benefits,* means a legitimate child, an adopted child, or a recognized natural child, of any age. It does not include a stepchild, a stillborn child, a grandchild, or a foster child. An individual who has reached age 18 is considered an adult and can receive a benefit payment in his/her name. However, if the age of adulthood where the individual has his/her legal residence is set at a lower age, the individual is considered an adult upon reaching that lower age. Adopted children do not inherit from their birth parents under the order of precedence stated in 5 U.S.C. 8705, other than as designated beneficiaries, but inherent from their adoptive parents. However, a child who is adopted by the spouse of a birth parent inherits from that birth parent.

Compensation means compensation under subchapter I of chapter 81 of title 5, United States Code, which is payable because of an on-the-job injury or disease.

Compensationer means an employee or former employee who is entitled to compensation and whom the Department of Labor determines is unable to return to duty.

Date of retirement, as used in 5 U.S.C. 8706(b)(1)(A), means the starting date of annuity.

Dependent means living with or receiving regular and substantial support from the insured individual.

Duly appointed representative of the insured's estate means an individual named in a court order granting the individual the authority to receive, or the right to possess, the insured's property; the order must be issued by a court having jurisdiction over the insured's estate. Where the law of the insured's legal residence provides for the administration of estates through alternative procedures which do away with the need for a court order, this term also means an individual who shows that he/she is entitled to receive, or possess, the insured's property under the terms of those alternative procedures.

Employee means an individual defined by section 8701(a) of title 5, United States Code.

Employing office means the agency office or retirement system office that has responsibility for life insurance actions.

(1) The Administrative Office of the United States Courts is the employing office for judges of the following courts:

(i) All United States Courts of Appeals;

(ii) All United States District Courts;

(iii) The Court of International Trade;

(iv) The Court of Federal Claims; and

(v) The District Courts of Guam, the Northern Mariana Islands, and the Virgin Islands.

(2) The Washington Headquarters Services is the employing office for judges of the United States Court of Appeals for the Armed Forces.

(3) The United States Tax Court is the employing office for judges of the United States Tax Court.

(4) The United States Court of Veterans Appeals is the employing

office for judges of the United States Court of Veterans Appeals.

Family member means a spouse (including a valid common law marriage) and unmarried dependent child(ren).

Immediate annuity means:

(1) An annuity that begins no later than 1 month after the date the insurance would otherwise stop (the date of separation from service), and

(2) An annuity under § 842.204(a)(1) of this title for which the starting date has been postponed under § 842.204(c) of this title.

Judge means an individual appointed as a Federal justice or judge under Article I or Article III of the Constitution.

OFEGLI means the Office of Federal Employees' Group Life Insurance, which pays benefits under the policy.

OPM means the Office of Personnel Management.

OWCP means the Office of Workers' Compensation Programs, U.S. Department of Labor, which administers subchapter I of chapter 81 of title 5, United States Code.

Parent means the mother or father of a legitimate child or an adopted child. The term *parent* includes the mother of a recognized natural child; it also includes the father of a recognized natural child if the recognized natural child meets the definition provided below.

Recognized natural child, with respect to paternity, is one for whom the father meets one of the following:

(1) (i) Has acknowledged paternity in writing;

(ii) Was ordered by a court to provide support;

(iii) Before his death, was pronounced by a court to be the father;

(iv) Was established as the father by a certified copy of the public record of birth or church record of baptism, if the insured was the informant and named himself as the father of the child; or

(v) Established paternity on public records, such as records of schools or social welfare agencies, which show that with his knowledge the insured was named as the father of the child.

(2) If paternity is not established by paragraph (1) of this definition, such evidence as the child's eligibility as a recognized natural child under other State or Federal programs or proof that the insured included the child as a dependent child on his income tax returns may be considered when attempting to establish paternity.

Reconsideration means the final level of administrative review of an employing office's initial decision to determine if the employing office followed the law and regulations correctly in making the initial decision concerning FEGLI eligibility and coverage.

Service means civilian service which is creditable under subchapter III of chapter 83 or chapter 84 of title 5, United States Code. This includes service under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard for an individual who elected to remain under a retirement system established for employees described in section 2105(c) of title 5.

Terminally ill means having a medical prognosis of a life expectancy of 9 months or less.

Underdeduction means a failure to withhold the required amount of life insurance deductions from an individual's pay, annuity, or compensation. This includes nondeductions (when none of the required amount was withheld) and partial deductions (when only part of the required amount was withheld).

§ 870.102 The policy.

Basic, Option A, Option B, and Option C benefits are payable according to a contract with the company or companies that issue a policy under § 8709 of title 5, United States Code. Any court action to obtain money due from this insurance policy must be taken against the company that issues the policy.

§ 870.103 Correction of errors.

(a) The employing office may make corrections of administrative errors regarding coverage or changes in coverage. Retroactive corrections are subject to the provisions of § 870.401(f).

(b) OPM may order correction of an error after reviewing evidence that it would be against equity and good conscience not to do so.

§ 870.104 Initial decision and reconsideration.

(a) An individual may ask his/her agency or retirement system to reconsider its initial decision denying life insurance coverage, the opportunity to change coverage, or the opportunity to assign insurance.

(b) An employing office's decision is an initial decision when the employing office gives it in writing and informs the individual of the right to an independent level of review (reconsideration) by the appropriate agency or retirement system.

(c) A request for reconsideration must be made in writing and must include the employee's (or annuitant's) name, address, date of birth, Social Security number, reason(s) for the request, and, if applicable, retirement claim number.

(d) A request for reconsideration must be made within 30 calendar days from the date of the initial decision. This time limit may be extended when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it or that he/she was unable, due to reasons beyond his/her control, to make the request within the time limit.

(e) The reconsideration must take place at or above the level at which the initial decision was made.

(f) After reconsideration, the agency or retirement system must issue a final decision to the insured individual. This decision must be in writing and must fully state the findings.

Subpart B—Types and Amount of Insurance

§ 870.201 Types of insurance.

(a) There are two types of life insurance under the FEGLI Program: Basic and Optional.

(b) There are three types of Optional insurance: Option A (standard optional insurance), Option B (additional optional insurance), and Option C (family optional insurance).

§ 870.202 Basic insurance amount (BIA).

(a)(1) An employee's Basic insurance amount (BIA) is either:

(i) His/her annual rate of basic pay, rounded to the next higher thousand, plus $2,000; or

(ii) $10,000; whichever is higher, unless an employee has elected a Living Benefit under subpart K of this part. However, the BIA can never be more than the annual rate of pay for Level II Executive Schedule positions under § 5313 of title 5, U.S.C., rounded to the next higher thousand, plus $2,000.

(2) The BIA of an individual who is eligible to continue Basic Life insurance coverage as an annuitant or compensationer is the BIA in effect at the time his/her insurance as an employee would stop under § 870.601.

(b) An employee's BIA automatically changes whenever annual pay is increased or decreased by an amount sufficient to raise or lower pay to a different $1,000 bracket, unless the employee has elected a Living Benefit under subpart K of this part.

(c) The amount of an employee's Basic Life insurance coverage is equal to his/her BIA multiplied by the appropriate factor based on the employee's age, as follows:

Age	Factor
35 or under	2.0

Age	Factor
36	1.9
37	1.8
38	1.7
39	1.6
40	1.5
41	1.4
42	1.3
43	1.2
44	1.1
45 or over	1.0

§ 870.203 Post-election BIA.

(a) The BIA of an individual who elects a Living Benefit under subpart K of this part is the amount of insurance left after the effective date of the Living Benefit election. This amount is the individual's post-election BIA.

(1) the post-election BIA of an individual who elects a full Living Benefit is 0.

(2) The post-election BIA of an employee who elects a partial Living Benefit is the BIA as of the date OFEGLI receives the completed Living Benefit application (the ''pre-election'' BIA), reduced by the percentage which the partial lump-sum payment represents of the full Living Benefit payment the employee could have received if he/she elected a full Living Benefit; this amount is rounded up or down to the nearest multiple of $1,000 or, if midway between multiples, to the next higher multiple.

(b) The post-election BIA cannot change after the effective date of the Living Benefit election.

(c) For purposes of computing the payment of benefits upon the death of an insured individual who elected a partial Living Benefit, the post-election BIA will be multiplied by the age factor in effect on the date OFEGLI received the completed Living Benefit application.

§ 870.204 Annual rates of pay.

(a) (1) An insured employee's annual pay is his/her annual rate of basic pay as fixed by law or regulation.

(2) Annual pay for this purpose includes the following:

(i) Interim geographic adjustments and locality-based comparability payments as provided by Pub. L. 101–509 (104 Stat. 1479);

(ii) Premium pay for standby duty for Federal civilian firefighters under 5 U.S.C. 5545(c)(1);

(iii) Premium pay for overtime inspectional service for customs officers as provided by Pub. L. 103–66 107 Stat. 453);

(iv) For a law enforcement officer as defined under 5 U.S.C. 8331(20) and §§ 831.902 and 842.802 of this title, premium pay for administratively uncontrollable overtime under 5 U.S.C. 5545(c)(2);

(v) Night differential pay for wage employees;

(vi) Environmental differential pay for employees exposed to danger or physical hardship;

(vii) Tropical differential pay for citizen employees in Panama;

(viii) Special pay adjustments for law enforcement officers;

(ix) Availability pay for criminal investigators under 5 U.S.C. 5545a; and

(x) Bonuses for physicians and dentists of the Department of Veterans Affairs under Pub. L. 96–330 (94 Stat. 1030).

(b) To convert a pay rate of other than annual salary to an annual rate, multiply the pay rate by the number of pay units in a 52-week work year.

(c) The annual pay for a part-time employee is his/her basic pay applied to his/her tour of duty in a 52-week work year.

(d) The annual pay for an employee on piecework rates is the total basic earnings for the previous calendar year, not counting premium pay for overtime or holidays.

(e) The annual pay for an employee with a regular schedule who works at different pay rates is the weighted average of the rates at which the employee is paid, projected to an annual basis.

(f) The annual pay for a non-Postal intermittent employee or an employee who works at different pay rates without a regular schedule is the annual rate which he/she is receiving at the end of the pay period.

(g) If an employee legally serves in more than 1 position at the same time, and at least 1 of those positions entitles him/her to life insurance coverage, the annual pay is the sum of the annual basic pay fixed by law or regulation for each position. Exception: this doesn't apply to part-time flexible schedule employees in the Postal Service.

§ 870.205 Amount of Optional insurance.

(a) Option A coverage is $10,000. However, if an employee's annual rate of pay is more than the sum of the annual rate of basic pay for Level II Executive Schedule positions under 5 U.S.C. 5313 plus $10,000, Option A coverage automatically increases. The amount of Option A coverage in this case is the difference between the employee's annual rate of pay, (rounded to the next higher thousand if not already an even thousand), and the maximum allowable BIA.

(b) (1) Option B coverage comes in 1, 2, 3, 4, or 5 multiples of an employee's annual pay (after the pay has been rounded to the next higher thousand, if not already an even thousand). A multiple cannot be more than the annual rate of basic pay for Level II Executive Schedule positions under 5 U.S.C. 5313, rounded to the next higher thousand.

(2) The amount of Option B coverage automatically changes whenever annual pay is increased or decreased by an amount sufficient to raise or lower pay to a different $1,000 bracket.

(c) Option C coverage is $5,000 payable upon the death of a spouse and $2,500 payable upon the death of an eligible child. Payments are made to the insured individual.

§ 870.206 Accidental death and dismemberment.

(a) (1) Accidental death and dismemberment coverage is an automatic part of Basic and Option A insurance for employees.

(2) There is no accidental death and dismemberment coverage with Options B and C.

(3) Individuals who are insured as annuitants or compensationers do not have accidental death and dismemberment coverage.

(b) (1) Under Basic insurance, accidental death benefits are equal to the BIA, but without the age factor described in § 870.202(c).

(2) Under Option A, accidental death benefits are equal to the amount of Option A.

(c)(1) Under Basic insurance, accidental dismemberment benefits for the loss of a hand, foot, or eye are equal to one-half the BIA. For loss of 2 or more of these in a single accident, benefits are equal to the BIA.

(2) Under Option A, accidental dismemberment benefits for the loss of a hand, foot, or eye are equal to one-half the amount of Option A. For loss of 2 or more of these in a single accident, benefits are equal to the amount of Option A.

(3) Accidental dismemberment benefits are paid to the employee.

Subpart C—Eligibility

§ 870.301 Eligibility for life insurance.

(a) Each nonexcluded employee is automatically insured for Basic insurance unless he/she waives it.

(b)(1) Optional insurance must be specifically elected; it is not automatic.

(2) An employee may elect one or more types of Optional insurance if:

(i) He/she has Basic insurance;

(ii) He/she doesn't have a waiver of that type (or types) of Optional insurance still in effect; and

(iii) His/her periodic pay, after all other deductions, is enough to cover the full cost.

§ 870.302 Exclusions.

(a) The following employees are excluded from life insurance coverage by law:

(1) An employee of a corporation supervised by the Farm Credit Administration, if private interests elect or appoint a member of the board of directors.

(2) An individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States. Exception: an individual who met the definition of employee on September 30, 1979, by service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone.

(3) An individual first employed by the Government of the District of Columbia on or after October 1, 1987. Exceptions:

(i) An employee of St. Elizabeths Hospital, who accepts employment with the District of Columbia Government following Federal employment without a break in service, as provided in section 6 of Pub. L. 98–621 (98 Stat. 3379);

(ii) An employee of the District of Columbia Financial Responsibility and Management Assistance Authority (Authority), who makes an election under the Technical Corrections to Financial Responsibility and Management Assistance Act (section 153 of Pub. L. 104–134 (110 Stat. 1321)) to be considered a Federal employee for life insurance and other benefits purposes; employees of the Authority who are former Federal employees are subject to the provisions of §§ 870.503(d) and 870.705 of this part;

(iii) The Corrections Trustee and the Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee and employees of these Trustees who accept employment with the District of Columbia government within 3 days after separating from the Federal Government; and

(iv) Effective October 1, 1997, judicial and nonjudicial employees of the District of Columbia Courts, as provided by Pub. L. 105–33 (111 Stat. 251).

(4) Teachers in Department of Defense dependents schools overseas, if employed by the Federal Government in a nonteaching position during the recess period between school years.

(b) The following employees are also excluded from life insurance coverage:

(1) An employee serving under an appointment limited to 1 year or less. Exceptions:

(i) An employee whose full-time or part-time temporary appointment has a regular tour of duty and follows a position in which he/she was insured, with no break in service or with a break in service of no more than 3 days;

(ii) An acting postmaster;

(iii) A Presidential appointee appointed to fill an unexpired term; and

(iv) Certain employees who receive provisional appointments as defined in § 316.403 of this title.

(2) An employee who is employed for an uncertain or purely temporary period, who is employed for brief periods at intervals, or who is expected to work less than 6 months in each year. Exception: an employee who is employed under an OPM-approved career-related work-study program under Schedule B lasting at least 1 year and who is expected to be in pay status for at least one-third of the total period of time from the date of the first appointment to the completion of the work-study program.

(3) An intermittent employee (a non-full-time employee without a regularly scheduled tour of duty). Exception: an employee whose intermittent appointment follows, with no break in service or with a break in service of no more than 3 days, a position in which he/she was insured and to which he/she is expected to return.

(4) An employee whose pay, on an annual basis, is $12 a year or less.

(5) A beneficiary or patient employee in a Government hospital or home.

(6) An employee paid on a contract or fee basis. Exception: an employee who is a United States citizen, who is appointed by a contract between the employee and the Federal employing authority which requires his/her personal service, and who is paid on the basis of units of time.

(7) An employee paid on a piecework basis. Exception: an employee whose work schedule provides for full-time or part-time service with a regularly scheduled tour of duty.

(c) OPM makes the final determination about whether the above categories apply to a specific employee or group of employees.

Subpart D—Cost of Insurance

§ 870.401 Withholdings and contributions for Basic insurance.

(a) The cost of Basic insurance is shared between the insured individual and the Government. The employee pays two thirds of the cost, and the Government pays one-third.

(b)(1) During each pay period in which an insured employee is in pay status for any part of the period, $0.165 must be withheld from the employee's biweekly pay for each $1,000 of the employee's BIA. The amount withheld from the pay of an employee who is paid on other than a biweekly basis must be prorated and adjusted to the nearest one-tenth of 1 cent.

(2) The amount withheld from the pay of an insured employee whose annual pay is paid during a period shorter than 52 work weeks is the amount obtained by converting the biweekly rate to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

(3) The amount withheld from the pay of an insured employee whose BIA changes during a pay period is based on the BIA in force at the end of the pay period.

(c) For each pay period in which an employee is insured, the employing agency must contribute an amount equal to one-half the amount withheld from the employee's pay. This agency contribution must come from the appropriation or fund that is used for the payment of the employee's pay. For an elected official, the contribution must come from the appropriation or fund that is available for payment of other salaries in the same office.

(d)(1) For an annuitant who elects to continue Basic insurance and chooses the maximum reduction of 75 percent after age 65 under § 870.702(a)(2), the amount withheld monthly is $0.3575 for each $1,000 of the BIA. For a compensationer who makes this election, the amount withheld weekly is $0.0825 for each $1,000. These withholdings stop the month after the month in which the annuitant reaches age 65. There are no withholdings from individuals who retired or began receiving compensation before January 1, 1990, and who elected the 75 percent reduction. For the purpose of this paragraph, an individual who separates from service after meeting the requirements for an immediate annuity under 5 U.S.C. 8412(g) is considered to retire on the day before the annuity begins.

(2) For an annuitant who elects to continue Basic insurance and chooses the maximum reduction of 50 percent after age 65 under § 870.702(a)(3), the amount withheld monthly is $0.8775 for each $1,000 of the BIA until the month after the month in which the annuitant reaches age 65; the amount is then reduced to $0.52 for each $1,000. For a compensationer who makes this election, the amount withheld weekly is $0.2025 for each $1,000 of the BIA until

age 65; the amount is then reduced to $0.12 for each $1,000.

(3) For an annuitant who elects to continue Basic insurance and chooses no reduction after age 65 under § 870.702(a)(4), the amount withheld monthly is $2,0475 for each $1,000 of the BIA until the month after the month in which the annuitant reaches age 65; the amount is then reduced to $1.69 for each $1,000. For a compensationer who makes this election, the amount withheld weekly is $0.4725 for each $1,000 of the BIA until age 65; the amount is then reduced to $0.39 for each $1,000.

(e)(1) For each period in which an annuitant or compensationer is insured, OPM must contribute an amount equal to one-half the amount that would be withheld under paragraph (d)(1) of this section. Exception: for USPS employees who become annuitants or compensationers after December 31, 1989, the Postal Service pays the Government contributions.

(2) The Government contribution is the same amount whether the individual elects a maximum 75 percent reduction, a maximum 50 percent reduction, or no reduction.

(3) The Government contribution stops the month after the month in which the individual reaches age 65.

(f) When an agency withholds less than or none of the proper amount of Basic life insurance deductions from an individual's pay, annuity, or compensation, the agency must submit an amount equal to the sum of the uncollected deduction and any applicable agency contributions required under 5 U.S.C. 8708 to OPM for deposit in the Employees' Life Insurance Fund.

§ 870.402 Withholdings for Optional insurance.

(a) The insured individual pays the full cost of all Optional insurance. There is no Government contribution toward the cost of any Optional insurance.

(b) During each pay period in any part of which an insured employee is in pay status, the employing agency must withhold the full cost of Optional insurance from his/her pay.

(c) Subject to the provisions for reemployed annuitants in § 870.705, the full cost of Optional insurance must be withheld from the annuity of an annuitant and from the compensation of a compensationer. These withholdings stop the month after the month in which an annuitant or compensationer reaches age 65.

(d)(1) The biweekly cost per $10,000 of Option A coverage is:

For persons under age 35	$0.40
For persons ages 35 through 39	.50
For persons ages 40 through 44	.70
For persons ages 45 through 49	1.10
For persons ages 50 through 54	1.80
For persons ages 55 through 59	3.00
For persons ages 60 and over	7.00

(2) The amount withheld from pay, annuity, or compensation paid on other than a biweekly basis must be prorated and adjusted to the nearest cent.

(e)(1) The biweekly cost per $1,000 of Option B coverage is:

For persons under age 35	$0.04
For persons ages 35 through 39	.05
For persons ages 40 through 44	.07
For persons ages 45 through 49	.11
For persons ages 50 through 54	.18
For persons ages 55 through 59	.30
For persons ages 60 and over	.70

(2) The amount withheld from pay, annuity, or compensation paid on other than a biweekly basis must be prorated and adjusted to the nearest one-tenth of 1 cent.

(f)(1) The biweekly cost of Option C coverage is based on the age of the employee, annuitant, or compensationer. the cost is:

For persons under age 35	$0.30
For persons ages 35 through 39	.31
For persons ages 40 through 44	.52
For persons ages 45 through 49	.70
For persons ages 50 through 54	1.00
For persons ages 55 through 59	1.50
For persons ages 60 and over	2.60

(2) The amount withheld from pay, annuity, or compensation paid on other than a biweekly basis must be prorated and adjusted to the nearest cent.

(g) For the purpose of this subpart, an individual is considered to reach age 35, 40, 45, 50, 55, or 60 on the first day of the first pay period beginning on or after the January 1 following his/her corresponding birthday.

(h) The amount withheld from the pay of an insured employee whose annual pay is paid during a period shorter than 52 work weeks is the amount obtained by converting this biweekly rate for his/her age group to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

(i) When an agency withholds less than or none of the proper amount of Optional life insurance deductions from an individual's pay, annuity, or compensation, the agency must submit an amount equal to the uncollected deductions required under 5 U.S.C. 8714a, 8714b, and 8714c to OPM for deposit in the Employees' Life Insurance Fund.

§ 870.403 Withholdings and contributions following a Living Benefit election.

(a) Withholdings and contributions for Basic insurance for an individual who elects a full Living Benefit under subpart K of this part stop at the end of the pay period in which the Living Benefit election is effective.

(b) Withholdings and contributions for Basic insurance for an employee who elects partial Living Benefit under subpart K of this part are based on the post-election BIA. This reduction in withholdings and contributions starts at the end of the pay period in which the Living Benefit election is effective.

(c) Withholdings and contributions for Basic insurance for an annuitant or compensationer who elected a partial Living Benefit as an employee are based on the post-election BIA.

(d) There is no change in withholdings for Optional insurance for individuals who elect a Living Benefit.

§ 870.404 Withholdings and contributions provisions that apply to both Basic and Optional insurance.

(a) Withholdings (and Government contributions, when applicable) are based on the amount of insurance in force at the end of the pay period.

(b) Withholdings are not required for the period between the end of the pay period in which an employee separates from service and the date his/her annuity or compensation begins.

(c) No payment is required while an insured employee is in nonpay status for up to 12 months. Exception: an employee who is in nonpay status while receiving compensation.

(d) The deposit described in §§ 870.401(f) and 870.402(i) must be made no later than 60 calendar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when the underdeduction is recovered by the agency. The agency must determine whether to waive collection of the overpayment of pay, in accordance with 5 U.S.C. 5584, as implemented by 4 CFR chapter I, subchapter G. However, if the agency involved is excluded from the provisions of 5 U.S.C. 5584, it may use any applicable authority to waive the collection.

(e) Effective October 21, 1972, when there is an official finding that an employee was suspended or fired erroneously, no withholdings are made from the back pay. Exception: if death or accidental dismemberment occurs during the period between the employee's removal and the finding that the agency action was erroneous,

premiums are withheld from the back pay awarded.

(f) If an individual's periodic pay, compensation, or annuity isn't sufficient to cover the full withholdings, any amount available for life insurance withholding must be applied first to Basic insurance, with any remainder applied to Optional insurance (first to Option B, then Option A, then Option C).

§ 870.405 Direct premium payments under 5 U.S.C. chapter 84 (Federal Employees' Retirement System—FERS).

(a) If the FERS annuity, excluding subchapter III of 5 U.S.C. chapter 84 (Thrift Savings Plan), is too low to cover premiums for Basic insurance, the retirement system must notify the annuitant (or the assignee, if the insurance has been assigned under subpart I of this part) of the opportunity to pay his/her share of the Basic insurance premium directly to the retirement system.

(b) The retirement system must establish a method for accepting these direct premium payments. The retirement system must provide the annuitant with a premium payment schedule and the requirements for continued enrollment.

(c) The annuitant must send the retirement system the required premium for every pay period during which the coverage continues, excluding the 31-day temporary extension of coverage provided in § 870.601. The annuitant must make payment after the pay period in which he/she is covered, according to the schedule established by the retirement system. If it does not receive payment by the due date, the retirement system must notify the annuitant that coverage will be continued only if he/she makes payment within 15 days after receiving the notice. The Basic insurance of an annuitant who doesn't pay within the specified time limit terminates. An individual whose coverage terminates because of nonpayment of premium cannot re-elect or reinstate coverage, except as provided in paragraph (d) of this section.

(d) If, for reasons beyond his/her control, an annuitant is unable to pay within 15 days after receiving the notice, he/she may request reinstatement of coverage by writing to the retirement system. Such a request must be made within 30 calendar days from the date of termination and must be accompanied by proof that the annuitant was prevented from paying within the time limit for reasons beyond his/her control. The retirement system will decide if the individual is eligible for reinstatement of coverage. If eligibility is approved, the coverage is reinstated back to the date of termination.

(e) Termination of coverage for failure to pay premiums within the time limit established according to paragraph (c) of this section is effective at the end of the last pay period for which payment has been received on time.

(f) The retirement system must submit all direct premium payments, along with its regular life insurance premiums, to OPM according to procedures set by OPM.

Subpart E—Coverage

§ 870.501 Basic insurance: effective dates of automatic coverage.

(a)(1) When an employee is appointed or transferred to a position in which he/she is eligible for insurance, the employee is automatically insured for Basic insurance on the day he/she enters on duty in pay status, unless, before the end of the first pay period, the employee files a waiver of Basic insurance with the employing office or had previously filed a waiver which remains in effect.

(2) An insured employee who moves to another covered position is automatically insured on the effective date of the move, unless the employee files a waiver of Basic insurance with the new employing office before the end of the first pay period in the new position.

(3) When an employee of the District of Columbia Financial Responsibility and Management Assistance Authority elects to be considered a Federal employee under section 153 of Pub. L. 104–134 (110 Stat. 1321), he/she is automatically insured on (i) the date the employee enters on duty in pay status with the Authority, or (ii) the date the Authority receives the employee's election to be considered a Federal employee, whichever is later.

(b) An employee who returns to pay and duty status after a period of more than 12 months of nonpay status is automatically insured at the time he/she actually enters on duty in pay status, unless, before the end of the first pay period, the employee files a waiver of Basic insurance coverage with the employing office or had previously filed a waiver which remains in effect.

(c) For an employee who serves in cooperation with a non-Federal agency and who is paid in whole or in part from non-Federal funds, OPM sets the effective date. This date must be part of an agreement between OPM and the non-Federal agency. The agreement must provide either:

(1) That the required withholdings and contributions be made from Federally controlled funds and deposited into the Employees' Life Insurance Fund on a timely basis, or

(2) That the cooperating non-Federal agency, by written agreement with the Federal agency, make the required withholdings and contributions from non-Federal funds and transmit that amount to the Federal agency for deposit into the Employees' Life Insurance Fund on a timely basis.

(d) If an employee waived Basic insurance on or before February 28, 1981, the waiver was automatically cancelled effective on the 1st day the employee entered on duty in pay status on or after April 1, 1981. Basic insurance coverage was automatically effective on the date of the waiver's cancellation, unless the employee filed a new waiver of Basic insurance with the employing office before the end of the pay period during which the coverage became effective.

§ 870.502 Basic insurance: waiver/cancellation of insurance.

(a) An insured individual may cancel his/her Basic insurance at any time by filing a waiver of Basic insurance coverage. An employee files with the employing office. An annuitant files with OPM or other office that administers his/her retirement system. If still employed, a compensationer files with the employing office, and if not still employed, with OPM. The waiver is effective, and the insurance stops, at the end of the pay period in which the waiver is properly filed. Exception: an individual who has assigned his/her insurance under subpart I of this part cannot cancel the insurance.

(b) An individual who cancels his/her Basic insurance automatically cancels all forms of Optional insurance.

§ 870.503 Basic insurance: cancelling a waiver.

(a) An annuitant or compensationer who has filed a waiver of Basic insurance cannot cancel the waiver.

(b) An employee who has filed a waiver of Basic insurance may cancel the waiver and become insured if:

(1) At least 1 year has passed since the effective date of the waiver, and

(2) He/she provides satisfactory medical evidence of insurability.

(c) OFEGLI reviews the Request for Insurance filed by an employee who has compiled with paragraph (b) of this section and decides whether to approve it. The insurance is effective when, after OFEGLI's approval, the employee actually enters on duty in pay status in a position in which he/she is eligible for

insurance. If the employee doesn't enter on duty in pay status within 31 days following the date of OFEGLI's approval, the approval is automatically revoked and the employee is not insured.

(d) When an employee who has been separated from service for at least 180 days is reinstated on or after April 1, 1981, a previous waiver of Basic insurance is automatically cancelled. Unless the employee files a new waiver, Basic insurance becomes effective on the 1st day he/she actually enters on duty in pay status in a position in which he/she is eligible for coverage. Exception: for employees who waived Basic insurance after February 28, 1981, separated, and returned to Federal service before December 9, 1983, the waiver remained in effect; these employees were permitted to elect Basic insurance by applying to their employing office before March 7, 1984.

§ 879.504 Optional insurance: election.

(a)(1) Each employee must elect or waiver Option A, Option B, and Option C coverage, in a manner designated by OPM, within 31 days after becoming eligible unless during earlier employment he/she filed an election or waiver which remains in effect. The 31-day time limit for Option B or Option C begins on the 1st day after February 28, 1981, on which an individual meets the definition of an employee.

(2) An employee of the District of Columbia Financial Responsibility and Management Assistance Authority who elects to be considered a Federal employee under section 153 of Pub. L. 104–134 (110 Stat. 1321) must elect or waive Option A, Option B, and Option C coverage within 31 days after the later of:

(i) The date his/her employment with the Authority begins, or

(ii) The date the Authority receives his/her election to be considered a Federal employee.

(3) Within 6 months after an employee becomes eligible, an employing office may determine that the employee was unable, for reasons beyond his/her control, to elect any type of Optional insurance within the time limit. In this case, the employee must elect or waive that type of Optional insurance 31 days after he/she is notified of the determination. The insurance is retroactive to the 1st day of the first pay period beginning after the date the individual became eligible or after April 1, 1981, whichever is later. The individual must pay the full cost of the insurance from that date for the time that he/she is in pay status, retired, or receiving compensation and under age 65.

(b) Any employee who doesn't file a Life Insurance Election with his/her employing office, in a manner designated by OPM, specifically electing any type of Optional insurance is considered to have waived it and does not have that type of Optional insurance.

(c) For the purpose of having Option A as an employee, an election of this insurance filed on or before February 28, 1981, is considered to have been cancelled effective at the end of the pay period which included March 31, 1981, unless the employee didn't actually enter on duty in pay status during the 1st pay period which began on or after April 1, 1981. In that case the election is considered to have been cancelled on the first day after the end of the next pay period in which the employee actually entered on duty in pay status. In order to have Option A as an employee after the date of this cancellation, an employee must specifically elect the coverage by filing the Life Insurance Election with his/her employing office subject to the provisions of § 870.504(a) or § 870.506(b).

(d) Optional insurance is effective the 1st day an employee actually enters on duty in pay status on or after the day the employing office receives the election.

(e) For an employee whose Optional insurance stopped for a reason other than a waiver, the insurance is reinstated on the 1st day he/she actually enters on duty in pay status in a position in which he/she again becomes eligible.

§ 870.505 Optional insurance: waiver/cancellation of insurance.

(a) An insured individual may cancel entirely any type of Optional insurance, or reduce the number of multiples of his/her Option B insurance, at any time by filing a waiver of Optional insurance coverage. An employee files with the employing office. An annuitant files with OPM or other office that administers his/her retirement system. If still employed, a compensationer files with the employing office, and if not still employed, with OPM. Exception: an individual who has assigned his/her insurance under subpart I of this part cannot cancel Option A or Option B coverage.

(b) A cancellation of Optional insurance becomes effective, and Optional insurance stops, at the end of the pay period in which the waiver is properly filed. Exception: if Option C is cancelled because there are no eligible family members, the effective date is retroactive to the end of the pay period in which there stopped being any eligible family members.

(c) A waiver of Optional insurance remains in effect until it is cancelled as provided in § 870.506.

§ 870.506 Optional insurance: cancelling a waiver.

(a) When there is a change in family circumstances. (1) A waiver of Option A cannot be cancelled due to a change in family circumstances.

(2) An employee who has waived Option B coverage may elect it, and an employee who has Option B of fewer than five multiples of annual pay may increase the number of multiples, upon his/her marriage or divorce, upon a spouse's death, or upon acquiring an eligible child.

(3) The number of multiples of Option B coverage that an employee can obtain or add (which can't exceed a total of five) is limited to the following:

(i) For marriage, the number of additional family members (spouse and eligible children) acquired with the marriage;

(ii) For acquisition of children, the number of eligible children acquired; and

(iii) For divorce or death of a spouse, the total number of eligible children of the employee.

(4) An employee who has waived Option C coverage may elect it upon his/her marriage or upon acquiring an eligible child. An employee may also elect Option C coverage upon divorce or death of a spouse if the employee has any eligible children.

(5)(i) The employee must file an election under paragraph (a)(2) or (a)(4) of this section with the employing office, in a manner designated by OPM, along with proof of the event, no later than 60 days following the date of the event that permits the election; the employee may instead file the election before the event and provide proof no later than 60 days following the event.

(ii) This 60-day time limit may be extended if the individual isn't serving in a covered position on the date of the event or if the individual separates from covered service prior to the end of the 60-day time limit. This extension cannot exceed the 31-day time limit for electing insurance following employment in a covered position or, for an election under paragraph (a)(4) of this section, the 31-day period following the 1st day on which the individual becomes eligible to cancel a waiver of Basic insurance.

(6)(i) The effective date of Option B insurance elected under paragraph (a)(1) of this section is the 1st day the employee actually enters on duty in pay

status on or after the day the employing office receives the election.

(ii) The effective date of Option C insurance elected under this paragraph is the day the employing office receives the election, or the date of the event, whichever is later.

(b) When there is no change in family circumstances. (1) An employee who has waived Option A or Option B coverage may elect it if:

(i) At least 1 year has passed since the effective date of the waiver, and

(ii) He/she provides satisfactory medical evidence of insurability.

(2) An employee who has Option B coverage of fewer than five multiples of annual pay may increase the number of multiples if:

(i) At least 1 year has passed since the effective date of his/her last election of fewer than five multiples (including a reduction in the number of multiples), and

(ii) He/she provides satisfactory medical evidence of insurability.

(iii) The requirement for at least 1 year to have passed since the effective date of the last election doesn't apply when an employee elected fewer than five multiples because of the limitation under paragraph (a)(3) of this section.

(3) A waiver of Option C cannot be cancelled without a change in family circumstances, unless authorized during an open enrollment period.

(c) OFEGLI reviews the request filed by an employee who has complied with paragraph (b) of this section and decides whether to approve it. The Optional insurance is effective when, after OFEGLI's approval, the employee actually enters on duty in pay status in a position in which he/she is eligible for insurance and files a Life Insurance Election. If the employee doesn't enter on duty in pay status within 31 days following the date of OFEGLI's approval, the approval is automatically revoked and the employee does not have the Optional insurance requested.

(d) If an employee waived Option A insurance on or before February 28, 1981, the waiver was automatically cancelled effective on the 1st day the employee entered on duty in pay status on or after April 1, 1981. Option A was effective on the date of the waiver's cancellation, if the employee filed an election of Option A during the March 1, 1981, through March 31, 1981, open enrollment period. If the employee didn't file the election with his/her employing office during the March 1981 open enrollment period, the employee is considered to have waived Option A on March 31, 1981.

(e) When an employee who has been separated from service for at least 180 days is reinstated on or after April 1, 1981, a previous waiver of Optional insurance is automatically cancelled, as follows:

(1) An employee who returned to service between April 1, 1981, and December 8, 1983, after a 180-day break in service was permitted to elect any form of Optional insurance by applying to his/her employing office before March 7, 1984.

(2) An employee who returns to service after December 8, 1983, following a 180-day break in service may elect any form of Optional insurance by applying to his/her employing office within 31 days after reinstatement. Coverage is effective on the 1st day the employee actually enters on duty in pay status in a position in which he/she is eligible for insurance on or after the date the employing office receives the election. If the employee doesn't file a Life Insurance Election, in a manner designated by OPM, within the 31-day period, the employee is considered to have waived Optional insurance. However, an employee who fails to file during the 31-day period due to reasons beyond his/her control may enroll belatedly under the conditions stated in § 870.504(a)(3).

(f) An annuitant or compensationer is not eligible to cancel a waiver of any type of Optional insurance or to increase multiples of Option B under this section.

§ 870.507 Open enrollment periods.

(a) There are no regularly scheduled open enrollment periods for life insurance. Open enrollment periods are held only when specifically scheduled by OPM.

(b) During an open enrollment period, unless OPM announces otherwise, eligible employees may cancel their existing waivers of Basic and/or Optional insurance by electing the insurance in a manner designated by OPM.

(c)(1) OPM sets the effective date for all insurance elected during an open enrollment period. The newly elected insurance is effective on the 1st day of the first pay period which begins on or after the OPM-established date and which follows a pay period during which the employee was in pay and duty status for at least 32 hours, unless OPM announces otherwise.

(2) A part-time employee must be in pay and duty status for one-half the regularly scheduled tour of duty shown on his/her current Standard Form 50 for newly elected coverage to become effective, unless OPM announces otherwise.

(3) An employee who has no regularly scheduled tour of duty or who is employed on an intermittent basis must be in pay and duty status for one-half the hours customarily worked before newly elected coverage can become effective, unless OPM announces otherwise. For the purpose of this paragraph, employing offices can determine the number of hours customarily worked by averaging the number of hours worked in the most recent calender year quarter prior to the start of the open enrollment period.

(d) Within 6 months after an open enrollment period ends, an employing office may determine that an employee was unable, for reasons beyond his/her control, to cancel an existing waiver by electing to be insured during the open enrollment period. In this case, if the employee wants coverage, he/she must submit an election within 31 days after being notified of the determination. Coverage is retroactive to the first pay period which begins on or after the effective date set by OPM and which follows a pay period during which the employee was in pay and duty status for at least 32 hours, unless OPM announces otherwise. If the employee doesn't file an election within this 31-day time limit, he/she will be considered to have waived coverage.

§ 870.508 Nonpay status.

(a) An employee who is in nonpay status is entitled to continue life insurance for up to 12 months. No premium payments are required, unless the employee is receiving compensation.

(b) If an insured employee who is entitled to free insurance while in nonpay status accepts a temporary appointment to a position in which he/she would normally be excluded from insurance, the insurance continues. The amount of Basic insurance is based on whichever position's salary is higher. Withholdings are made from the employee's pay in the temporary position.

(c) If an insured employee goes on leave without pay (LWOP) to serve as a full-time officer or employee of an employee organization, within 60 days of the start of the LWOP he/she may elect to continue life insurance. The insurance continues for the length of the appointment, even if the LWOP lasts longer than 12 months. The employee must pay to the employing office the full cost of Basic and Optional insurance. There is no Government contribution for these employees.

(d) If an insured employee goes on LWOP while assigned to a State government, local government, or

institution of higher education, life insurance continues for the length of the assignment, even if the LWOP lasts longer than 12 months. The employee must pay his/her premiums to the Federal agency on a current basis. The agency must continue to pay its contribution as long as the employee makes his/her payments.

§ 870.509 Transfers to international organizations.

An employee transferred to an international organization may continue life insurance coverage as provided in 5 U.S.C. 3582. Regulations governing these transfers are in part 352 of this title.

Subpart F—Termination and Conversion

§ 870.601 Termination of Basic insurance.

(a) Except as provided in § 870.701, the Basic insurance of an insured employee stops on the date he/she separates from service, subject to a 31-day extension of coverage.

(b) The Basic insurance of an employee who separates from service after meeting the requirement for an immediate annuity under § 842.204(a)(1) of this title and who postpones receiving the annuity, as provided by § 842.204(c) of this title, stops on the date he/she separates from service, subject to a 31-day extension of coverage.

(c) The Basic insurance of an insured employee who moves without a break in service to a position in which he/she is excluded from life insurance stops on his/her last day in the former position, subject to a 31-day extension of coverage.

(d)(1) Except as provided in § 870.701, the Basic insurance of an insured employee who is in nonpay status stops on the date the employee completes 12 months in nonpay status, subject to a 31-day extension of coverage. The 12 months' nonpay status may be broken by periods of less than 4 consecutive months in pay status. If an employee has at least 4 consecutive months in pay status after a period of nonpay status, he/she is entitled to begin the 12 months' continuation of Basic insurance again. If an employee has used up his/her 12 months' continuation in nonpay status and returns to duty for less than 4 consecutive months, his/her Basic insurance stops on the 32nd day after the last day of the last pay period in pay status.

(2) For the purpose of paragraph (d)(1) of this section, 4 consecutive months in pay status means any 4-month period during which the employee is in pay status for at least part of each pay period.

(3) For the purpose of paragraph (d)(1) of this section, an individual who is entitled to benefits under part 353 of this chapter is considered to be an employee in nonpay status.

§ 870.602 Termination of Optional insurance.

(a) The Optional insurance of an insured employee stops when his/her Basic insurance stops, subject to the same 31-day extension of coverage.

(b) The Optional insurance of an employee who separates from service after meeting the requirement for an immediate annuity under § 842.204(a)(1) of this title and who postpones receiving the annuity, as provided by § 842.204(c) of this title, stops on the date he/she separates from service, subject to a 31-day extension of coverage.

(c) If an insured employee isn't eligible to continue Optional coverage as an annuitant or compensationer as provided by § 870.701, the Optional insurance stops on the date that his/her Basic insurance is continued or reinstated under the provisions of § 870.701, subject to a 31-day extension of coverage.

(d) If, at the time of an individual's election of Basic insurance during receipt of annuity or compensation, he/she elects no Basic life insurance as provided by § 870.702(a)(1), the Optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

(e) Except as provided in § 870.405, Optional insurance stops, subject to a 31-day extension of coverage, at the end of the pay period in which it's determined that an individual's periodic pay, compensation, or annuity, after all other deductions, isn't enough to cover the full cost of the Optional insurance. If an individual has more than one type of Optional insurance and his/her pay, compensation, or annuity is sufficient to cover some but not all of the insurance, Option C terminates first, followed by Option A, and then the multiples of Option B.

§ 870.603 Conversion of Basic and Optional insurance.

(a)(1) When group coverage terminates for any reason other than voluntary cancellation, an employee may apply to convert all or any part of his/her Basic and Optional insurance to an individual policy; no medical examination is required. The premiums for the individual policy are based on the employee's age and class of risk. An employee is eligible to convert the policy only if he/she doesn't return, within 3 calendar days from the terminating event, to a position covered under the group plan. If insurance has been assigned under subpart I of this part, it is the assignee(s), not the employee, who has(have) the right to convert.

(2) The employing agency must notify the employee/assignee(s) of the loss of coverage and the right to convert to an individual policy either before or immediately after the event causing the loss of coverage.

(3) The employee/assignee(s) must submit the request for conversion information to OFEGLI. It must be postmarked within 31 days following the date of the terminating event or within 31 days of the date the employee/assignee received the notice of loss of group coverage and right to convert, whichever is later.

(4) An employee/assignee who fails to use his/her conversion right within 31 days after receiving notice of the right to convert or within 31 days of the terminating event, whichever is later, is considered to have refused coverage, unless OFEGLI determines the failure was for reasons beyond the employee's control, as described in paragraph (a)(5) of this section.

(5) When an agency fails to provide the notification required in paragraph (a)(2) of this section, or the employee/assignee fails to request conversion information within the time limit set in paragraph (a)(3) of this section for reasons beyond his/her control, the employee may make a belated request by writing to OFEGLI. The employee/assignee must make the request within 6 months after becoming eligible to convert the insurance. The employee/assignee must show that he/she wasn't notified of the loss of coverage and the right to convert and was not otherwise aware of it or that he/she was unable to convert to an individual policy for reasons beyond his/her control. OFEGLI will determine if the employee/assignee is eligible to convert. If the request is approved, the employee must convert within 31 days of that determination.

(b) The individual conversion policy is effective the day after the group coverage ends. The employee/assignee must pay the premiums for any period retroactive to that date.

(c) The 31-day extension of coverage provided under this subpart does not depend upon timely notification of the right to convert to an individual policy. The extension cannot be continued beyond 31 days.

Subpart G—Annuitants and Compensationers

§ 870.701 Eligibility for life insurance.

(a) When an insured employee retires, Basic life insurance (but not accidental death and dismemberment) continues or is reinstated if he/she:

(1) Is entitled to retire on an immediate annuity under a retirement system for civilian employees, including the retirement system of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard;

(2) Was insured for the 5 years of service immediately before the date the annuity starts, or for the full period(s) of service during which he/she was eligible to be insured if less than 5 years; and

(3) Has not converted to an individual policy as described in § 870.603. If it is determined that an individual is eligible to continue the group coverage as an annuitant after he/she has already converted to an individual policy, the group enrollment may be reinstated. If the individual wants the group coverage reinstated, the conversion policy must be voided, the group policy must be reinstated retroactively, and the premiums already paid on the conversion policy must be refunded to the individual.

(b) Following separation or the completion of 12 months' nonpay status, a compensationer's Basic life insurance (but not accidental death and dismemberment) continues or is reinstated if he/she:

(1) Has been insured for the 5 years of service immediately before the date of entitlement to compensation, or for the full period(s) of service during which he/she was eligible to be insured if less than 5 years; and

(2) Has not converted to an individual policy as described in § 870.603. If it is not determined that an individual is eligible to continue the group coverage as a compensationer until after he/she has converted, the group enrollment may be reinstated. If the individual wants the group coverage reinstated, the conversion policy must be voided, the group policy must be reinstated retroactively, and the premiums already paid on the conversion policy must be refunded to the individual.

(c) An individual who meets the requirements under paragraphs (a) or (b) of this section or § 870.706 for continuation or reinstatement of life insurance must complete an election, in a manner designated by OPM, at the time entitlement is established. For the election to be valid, OPM must receive the election before OPM has made a final decision on the individual's application for annuity or supplemental annuity or an individual's request to continue life insurance as a compensationer. If there is no valid election, OPM considers the individual to have chosen the option described in paragraph (a)(2) of § 870.702.

(d) If the annuity or compensation of an insured individual is terminated, or if the Department of Labor finds that an insured compensationer is able to return to duty, his/her Basic life insurance held as an annuitant or compensationer stops on the date of the termination or finding. There is no 31-day extension of coverage or conversion right.

(e)(1) An annuitant or compensationer who is eligible to continue or have reinstated Basic insurance is also eligible to continue or have reinstated Optional insurance if he/she meets the same coverage requirements for Optional insurance as those stated in paragraph (a) or (b) of this section for Basic insurance.

(2) For the purpose of continuing insurance as an annuitant or compensationer, an employee is not considered to have been eligible for Option C during any period when the employee had no eligible family members.

§ 870.702 Election of Basic insurance.

(a) Unless he/she has elected a Living Benefit, an individual who makes an election under § 870.701(c) must select one of the following options:

(1) Termination of the insurance. The individual's insurance stops upon conversion to an individual policy as provided under § 870.603. If the individual doesn't convert to an individual policy, insurance stops at the end of the month in which OPM or the employing office receives the election;

(2) Continuation or reinstatement of Basic insurance with a maximum reduction of 75 percent during retirement. Premiums are withheld from annuity or compensation (except as provided under 870.401(d)(1)). The amount of Basic Life insurance in force reduces by 2 percent of the BIA each month until the maximum reduction is reached. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later;

(3) Continuation or reinstatement of Basic insurance with a maximum reduction of 50 percent during retirement. Premiums are withheld from annuity or compensation. The amount of Basic insurance in force reduces by 1 percent of the BIA each month until the maximum reduction is reached. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later; or

(4) Continuation or reinstatement of Basic insurance with no reduction after age 65. Premiums are withheld from annuity or compensation.

(b)(1) Unless an employee has elected a partial Living Benefit under subpart K of this part or an individual has assigned the insurance under subpart I of this part, an insured individual may cancel an election under paragraph (a)(3) or (a)(4) of this section at any time. The amount of Basic insurance automatically switches to the amount that would have been in force if the individual had originally elected the 75 percent reduction. This revised amount is effective at the end of the month in which OPM receives the request to cancel the previous election.

(2) If an individual files a waiver of insurance, the coverage stops without a 31-day extension of coverage or conversion right. This is effective at the end of the month in which OPM receives the waiver.

(c) Unless he/she chooses to terminate his/her insurance, an employee who has elected a partial Living Benefit must choose the no reduction election under paragraph (a)(4) of this section. He/she cannot later change to the 75 percent reduction.

(d) If an employee has assigned his/her insurance, he/she cannot cancel an election under paragraph (a)(3) or (a)(4) of this section. Only the assignee(s) may cancel this election. Exception: if the employee elected a partial Living Benefit before assigning the remainder of his/her insurance, the assignee(s) cannot cancel the election under paragraph (a)(4) of this section.

§ 870.703 Amount of life insurance.

(a)(1) The amount of Basic insurance an annuitant or compensationer can continue is his/her BIA on the date insurance would otherwise have stopped because of separation from service or completion of 12 months in nonpay status. The amount of Basic insurance in force is the BIA minus any reductions applicable under § 870.702(a).

(2) For the purpose of paying benefits upon the death of an insured individual under age 45 who is retired or receiving compensation, the BIA will be multiplied by the appropriate age factor shown in § 870.202(c). Exceptions:

(i) If the insured individual retired or started receiving compensation before October 10, 1980, or

(ii) If the insured individual elected a partial Living Benefit as an employee under subpart K of this part.

(3)(i) For an annuitant or compensationer who elected a partial Living Benefit as an employee, the amount of Basic insurance he/she can continue is the post-election BIA, as shown in § 870.203(a)(2).

(ii) For the purpose of paying benefits upon the death of an insured annuitant or compensationer under age 45 who elected a partial Living Benefit as an employee, the BIA will be multiplied by the age factor in effect on the date OFEGLI received the completed Living Benefit application.

(b)(1) The amount of Option A coverage an annuitant or compensationer can continue is the amount in force on the date insurance would otherwise stop.

(2) An annuitant's or compensationer's Option A coverage reduces by 2 percent a month up to a maximum reduction of 75 percent. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later.

(c)(1) The number of multiples of Option B coverage an annuitant or compensationer can continue is the smallest number of multiples in force during the applicable period of service required to continue Option B.

(2) Each multiple of an annuitant's or compensationer's Option B coverage reduces by 2 percent a month. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the insured's 65th birthday, whichever is later. At 12:00 noon on the day before the 50th reduction, the insurance stops, with no extension of coverage or conversion right.

(d) The amount of an annuitant's or compensationer's Option C coverage on each family member reduces by 2 percent a month. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the annuitant's or compensationer's 65th birthday, whichever is later. At 12:00 noon on the day before the 50th reduction, the insurance stops, with no extension of coverage or conversion right.

(e)(1) Judges retiring under 28 U.S.C. 371 (a) and (b), 28 U.S.C. 372(a), and 26 U.S.C. 7447 are considered employees under the FEGLI law. Basic and Optional insurance for these judges continues without interruption or reduction upon retirement.

(2) If a judge chooses to receive compensation instead of an annuity, his/her Basic and Optional insurance reduces as stated in § 870.702 and paragraphs (b), (c), and (d) of this section.

§ 870.704 Reinstatement of life insurance.

(a) An annuitant whose disability annuity terminates because he/she recovers from the disability or because his/her earning capacity returns, and whose disability annuity is later restored under 5 U.S.C. 8337(e) (after December 31, 1983), may elect to resume the Basic insurance held immediately before his/her disability annuity terminated. OPM must receive the election within 60 days after OPM mails a notice of insurance eligibility and an election form.

(b) An annuitant described in paragraph (a) of this section may elect to resume any Optional insurance held immediately before the annuity terminated if:

(1) He/she has made an election under paragraph (a) of this section; and

(2) OPM receives the election within 60 days after OPM mails a notice of insurance eligibility and an election form.

(c) Basic and Optional insurance reinstated under paragraphs (a) and (b) of this section is effective on the 1st day of the month after the date OPM receives the election. Any applicable annuity withholdings are also reinstated on the 1st day of the month after OPM receives the election.

(d) The amounts of Basic and Optional insurance reinstated under paragraphs (a) and (b) of this section are the amounts that would have been in force if the individuals's annuity hadn't terminated.

§ 870.705 Reemployed annuitants.

(a)(1) If an insured annuitant is appointed to a position in which he/she is eligible for insurance, the amount of his/her Basic life insurance as an annuitant (and any applicable annuity withholdings) is suspended on the day before the 1st day in pay status under the appointment, unless the reemployed annuitant waives all insurance coverage. The Basic insurance benefit payable upon the death of a reemployed annuitant who has Basic insurance in force as an employee can't be less than the benefit which would have been payable if the individual hadn't been reemployed.

(2) Except as provided in paragraph (b) of this section, the Basic insurance obtained as an employee stops with no 31-day extension of coverage or conversion right, on the date reemployed terminates. Any suspended Basic insurance (and any applicable annuity withholdings) is reinstated on the day following termination of the reemployment.

(b) Basic insurance obtained during reemployment can be continued after the reemployment terminates if:

(1) The annuitant qualifies for a supplemental annuity or receives a new retirement right;

(2) He/she has had Basic insurance as an employee for at least 5 years of service immediately before separation from reemployment or for the full period(s) during which such coverage was available to him/her, whichever is less; and

(3) He/she doesn't convert to nongroup insurance when Basic insurance as an employee would otherwise terminate.

(c) If the Basic insurance obtained during reemployment is continued as provided in paragraph (b) of this section, any suspended Basic life insurance stops, with no 31-day extension of coverage or conversion right.

(d) (1) An annuitant appointed to a position in which he/she is eligible for Basic insurance, is also eligible for Optional insurance as an employee, unless he/she has on file an uncancelled waiver of Basic or Optional insurance.

(2) If the individual has Option A or C as an annuitant, that insurance (and applicable annuity withholdings) is suspended on the day before his/her 1st day in pay status under the appointment. Unless he/she waives Option A or C (or waives Basic insurance), he/she obtains Option A or C as an employee.

(3) If the individual has Option B as an annuitant, that insurance (and applicable annuity withholdings) continues as if the individual weren't reemployed, unless:

(i) The individual files with his/her employing office an election of Option B, in a manner designated by OPM, within 31 days after the date of reemployment. in this case Option B (and applicable annuity withholdings) as an annuitant is suspended on the date that Option B as an employee becomes effective; or

(ii) The individual waives Basic insurance.

(4) The Option B benefit payable upon the death of a reemployed annuitant is the amount in effect as an annuitant, unless he/she elected to have Option B as an employee.

(5) Except as provided in paragraph (e) of this section, the Optional insurance obtained as an employee stops, with no 31-day extension or conversion right, on the date reemployment terminates. The amount

of suspended Optional insurance which remains in force after applicable monthly reductions after age 65 (and corresponding withholdings) is reinstated on the day after reemployment terminates.

(e) Optional life insurance obtained during reemployment may be continued after the reemployment terminates if the annuitant:

(1) Qualifies for a supplemental annuity or receives a new retirement right;

(2) Continues his/her Basic life insurance under paragraph (a) (2), (3), or (4) of § 870.702; and

(3) Has had Optional insurance as an employee for at least the 5 years of service immediately before separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less.

(f) If Optional insurance obtained during reemployment is continued as provided in paragraph (e) of this section, any suspended Optional insurance stops, with no 31-day extension of coverage or conversion right.

(g) If a reemployed annuitant waives life insurance as an employee, the waiver also cancels his/her life insurance as an annuitant.

§ 870.706 MRA-plus-10 annuitants.

(a) The Basic insurance of an individual whose coverage terminates under § 870.601(b), and who meets the requirements for continuing Basic insurance after retirement as stated in § 870.701(a), resumes on the starting date of annuity or on the date OPM receives the application for annuity, whichever is later. The individual must file an election as provided in § 870.701(c) so that OPM receives it within 60 days after OPM mails a notice of insurance eligibility and an election form.

(b) Optional insurance of an individual whose coverage terminates under § 870.602(b), and who meets the requirements for continuing Optional insurance after retirement under § 870.701(e), resumes on the starting date of annuity or on the date OPM receives the application for annuity, whichever is later.

Subpart H—Order of Precedence and Designation of Beneficiary

§ 870.801 Order of precedence and payment of benefits.

(a) Benefits are paid according to the order of precedence stated in 5 U.S.C. 8705(a), as follows:

(1) to the designated beneficiary (or beneficiaries);

(2) If none, to the widow(er);

(3) If none, to the child, or children in equal shares, with the share of any deceased child going to his/her children;

(4) If none, to the parents in equal shares or the entire amount to the surviving parent;

(5) If none, to the executor or administrator of the estate;

(6) If none, to the next of kin according to the laws of the State in which the insured individual legally resided.

(b) If an insured individual provides in a valid designation of beneficiary for insurance benefits to be payable to the insured's estate, or to the Executor, Administrator, or other representative of the insured's estate, or if the benefits would otherwise be payable to the duly appointed representative of the insured's estate under the order of precedence specified in 5 U.S.C. 8705(a), payment of the benefits to the duly appointed representative of the insured's estate bars recovery by any other person.

(c) Option A and B insurance in force on a person on the date of his/her death is paid, on receipt of a valid claim, in the same order of precedence and under the same conditions as Basic insurance. A designation of beneficiary for Basic insurance is also a designation of beneficiary for Options A and B, unless the insured individual states otherwise in his/her designation.

(d) Upon the death of an insured family member, Option C benefits are paid to the employee, annuitant, or compensationer responsible for withholdings under § 870.402(f), except as provided in paragraph (e) of this section.

(e) If an employee, annuitant, or compensationer entitled to receive Option C benefits dies before the benefits are paid, the Option C benefits are paid to the individual(s) entitled to receive Basic life insurance benefits under the statutory order of precedence. However, if the insurance has been assigned in accordance with subpart I of this part, any prior designations of beneficiary were cancelled; benefits in this instance are paid under the statutory order of precedence, starting with the second on the list.

§ 870.802 Designation of beneficiary.

(a) If an insured individual wants benefits paid differently from the order of precedence, he/she must file a designation of beneficiary. A designation of beneficiary cannot be filed by anyone other than the insured individual. Exception: if the insurance has been assigned under subpart I of this part, the insured individual cannot designate a beneficiary; only the assignee(s) can designate beneficiaries.

(b) A designation of beneficiary must be in writing, signed by the insured individual, and witnessed and signed by two people. The employing office (or OPM, in the case of an individual receiving an annuity or compensation) must receive the designation before the death of the insured.

(c) A designation, change, or cancellation of beneficiary in a will or any other document not witnessed and filed as required by this section has no legal effect with respect to benefits under the chapter.

(d) A witness to a designation of beneficiary cannot be named as a beneficiary.

(e) Any individual, firm, corporation, or legal entity can be named as a beneficiary, except an agency of the Federal or District of Columbia Government.

(f) An insured individual (or an assignee) may change his/her beneficiary at any time without the knowledge or consent of the previous beneficiary. This right cannot be waived or restricted.

(g) (1) A designation of beneficiary is automatically cancelled 31 days after the individual stops being insured.

(2) An assignment under subpart I of this part automatically cancels an insured individual's designation of beneficiary.

(h) An insured individual may provide that a designated beneficiary is entitled to the insurance benefits only if the beneficiary survives him/her for a specified period of time (not more than 30 days). If the beneficiary doesn't survive for the specified period, insurance benefits will be paid as if the beneficiary had died before the insured.

§ 870.803 Child incapable of self-support.

(a) When it receives a claim for Option C benefits because of the death of a child age 22 or older, OFEGLI determines, based on whatever evidence it considers necessary, whether the deceased child was incapable of self-support because of a mental or physical disability which existed before the child reached age 22.

(b) If an employee elects Option C under § 870.506(a) (3), and the opportunity to elect is based solely on the acquisition of a child age 22 or older, the employee must submit to the employing office, at the time of making the election, a doctor's certificate stating that the child is incapable of self-support because of a physical or mental disability which existed before the child reached age 22 and which is expected

to continue for more than 1 year. The certificate must include the name of the child, the type of disability, how long it has existed, and its expected future course and duration. The certificate must be signed by the doctor and show his/her office address.

Subpart I—Assignments of Life Insurance

§ 870.901 Assignments permitted.

(a) (1) Section 208 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98–353 (98 Stat. 355), effective July 10, 1984, permits Federal judges to irrevocably assign their FEGLI coverage to one or more individuals, corporations, or trustees. Section 4 of Pub. L. 103–336 (108 Stat. 2661), effective October 3, 1994, extended this right to all Federal employees, annuitants, and compensationers.

(2) An individual may assign ownership of all life insurance under this part, except Option C. If an individual wishing to make an assignment owns more than one type of coverage, he/she must assign all the insurance; an individual cannot assign only a portion of the coverage. Option C cannot be assigned.

(b) An individual cannot name conditional assignees in case the primary assignee dies before the insured individual.

(c) If the insurance is assigned to two or more individuals, corporations, or trustees, the insured individual must specify percentage shares, rather than dollar amounts or types of insurance, to go to each assignee.

(d) If an individual who has made an assignment later elects increased insurance coverage under § 870.506 or during an open enrollment period, the increased coverage is considered included in the already existing assignment. The right to increase coverage remains with the insured individual, rather than transferring to the assignee.

(e) An individual who assigns ownership of insurance continues to be the insured individual, but the assignee receives those rights of an insured individual that are specified in this part.

(f) Once assigned, the value of the insurance increases or decreases automatically as provided by this part. Exception: if the insured individual elected a Living Benefit before assigning the remainder of his/her insurance, the amount of Basic insurance does not increase or decrease.

(g) An insured individual who has assigned his/her insurance cannot elect a Living Benefit; nor can an assignee elect a Living Benefit on behalf of the insured individual.

(h) An insured individual who has elected a Living Benefit under subpart K of this part may assign the remainder of his/her insurance. The assignment would affect Option A, Option B, and, for an employee who elected a partial Living Benefit, Basic insurance.

§ 870.902 Making an assignment.

To assign insurance, an insured individual must complete an approved assignment form. Only the insured individual may make an assignment; no one can assign on behalf of an insured individual. The individual must submit the completed and signed form to the employing office indicating the intent to irrevocably assign all ownership of the insurance; the form must also be signed by 2 witnesses. (Assignments submitted prior to November 28, 1986, were accepted without an approved assignment form.)

§ 870.903 Effective date of assignment.

An assignment under this subpart is effective on the date the employing office receives the properly completed, signed, and witnessed assignment form.

§ 870.904 Amount of insurance.

The amount of insurance is the amount of the insured individual's Basic insurance, plus any Option A and Option B coverage.

§ 870.905 Withholdings.

Premium withholdings for assigned insurance are withheld from the salary, annuity, or compensation of the insured individual, as provided in subpart D of this part.

§ 870.906 Cancellation of insurance.

(a) The right to cancel (or reduce) insurance transfers to the assignee; the insured individual cannot cancel (or reduce) insurance after making an assignment.

(b) The assignee has the right to cancel insurance according to the provisions of §§ 870,502 and 870.505. When there is more than one assignee, all assignees must agree to the cancellation. A cancellation of Basic insurance also cancels all Optional insurance.

§ 870.907 Termination and conversion.

(a) Assigned insurance terminates under the conditions stated in subpart F of this part.

(b)(1) When an insured individual's insurance terminates, an assignee has the right to convert all or part of the group insurance to an individual policy on the insured individual. The conditions stated in subpart F of this part apply to assignees who elect to convert.

(2) When there is more than one assignee, each assignee has the right to convert all or part of his/her share of the insurance. Any assignee who doesn't convert loses all ownership of the insurance.

(3) When there is more than one assignee, the maximum amount of insurance each assignee will be able to convert is determined by the dollar amount corresponding to the assignee's share of the total insurance. This amount will be rounded up to the next higher thousand, if it's not already an even thousand dollar amount.

(4) Premiums for converted life insurance are based on the insured individual's age and class of risk at the time the conversion policy is issued.

(5) The employing office must notify each assignee of the conversion right at the time the assigned group insurance terminates.

(c) The assignment terminates 31 days after the insurance terminates, unless the insured individual is reemployed in or returns to a position in which he/she is entitled to coverage under this chapter within 31 days after the insurance terminates.

§ 870.908 Annuitants and compensationers.

(a) If an employee assigns Basic insurance and later becomes eligible to continue such insurance coverage as an annuitant or compensationer as provided in § 870.701:

(1) At the time he/she retires or becomes eligible as a compensationer, the insured individual may elect unreduced or partially reduced insurance coverage as provided in § 870.702(a). This right remains with the insured individual and does not transfer to the assignee. Exception: if the insured individual elected a partial Living Benefit as an employee under subpart K of this part, he/she can only elect unreduced insurance coverage.

(2) After the individual has made the election described in paragraph (a)(1) of this section, the assignee (or, if more than one, all of the assignees acting together) may, at any time, elect to cancel the annuitant's or compensationer's election of increased coverage, as provided in § 870.702(b). The right to cancel the election transfers to the assignee; the annuitant or compensationer cannot cancel the election after making an assignment. Exception: if the individual elected a partial Living Benefit as an employee under subpart K of this part, the assignee(s) cannot cancel the election of unreduced insurance coverage.

(b) When more than one assignee has been named, at the time the insured individual becomes eligible to continue coverage as an annuitant or compensationer, some assignees may choose to convert their part of the insurance, while others may choose to continue the coverage during the insured individual's retirement or receipt of compensation. The amount of each type of continued insurance is determined by the total percentage of the shares of the assignees who choose to continue the coverage.

(c)(1) When an annuitant who has assigned his/her insurance is reemployed in a position in which he/she is entitled to life insurance coverage, the coverage he/she acquires as a reemployed annuitant is subject to the existing assignment.

(2) The right of a reemployed annuitant to elect Option B coverage as an employee rather than as an annuitant under § 870.705(d)(3) remains with the insured individual and does not transfer to the assignee. Any Option B coverage elected as an employee is subject to the existing assignment.

§ 870.909 Designations and changes of beneficiary.

(a)(1) An assignment automatically cancels an insured individual's prior designation of beneficiary. After making an assignment, an individual cannot designate a beneficiary; the right to designate beneficiaries transfers to the assignee.

(2) Each assignee may designate a beneficiary or beneficiaries to receive insurance benefits upon the death of the insured individual and may also later change the beneficiaries. An assignee may designate himself/herself the primary beneficiary and name another contingent beneficiary(ies) to receive insurance benefits if the assignee dies before the insured individual.

(b) Benefits for assigned insurance are paid to the assignee(s) if the assignee(s) did not designate a beneficiary.

(c) Benefits for assigned insurance are paid to an assignee's estate if the assignee dies before the insured individual and:

(1) The assignee (or the assignee's heirs) did not designate a beneficiary; or

(2) The assignee's designated beneficiary dies before the insured individual.

(d) The provisions of § 870.802 apply to designations of beneficiary made by assignees.

§ 870.910 Notification of current addresses.

Each assignee and each beneficiary of an assignee must keep the office where the assignment is filed informed of his/her current address.

Subpart J—Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon

§ 870.1001 Purpose.

This subpart sets forth the conditions for life insurance coverage according to the provisions of section 599C of Pub. L. 101–513 (104 Stat. 2035).

§ 870.1002 Definitions.

In this subpart:

Hostage and *hostage status* have the meaning set forth in section 599C of Pub. L. 101–513 (104 Stat. 2035).

Pay period for individuals insured under this subpart means the pay period set by the U.S. Department of State.

Period of eligibility means the period beginning on the effective date set forth in § 870.1004 and ending 12 months after hostage status ends for hostages in Iraq and Kuwait and 60 months after hostage status ends for hostages captured in Lebanon.

§ 870.1003 Coverage and amount of insurance.

(a) An individual is covered under this subpart when the U.S. Department of State determines that the individual is eligible under section 599C of Pub. L. 101–513 (104 Stat. 2035).

(b)(1) The amount of Basic life insurance for these individuals is the amount specified in § 870.202, subject to the applicable conditions stated in this subpart.

(2) The BIA under § 870.202 is the amount of the payment specified in section 599C(b)(2) of Pub. L. 101–513 (104 Stat. 2035), rounded to the next higher $1,000, plus $2,000.

(c) Individuals who have Basic insurance under this section also have group accidental death and dismemberment insurance.

(d) Individuals insured by this subpart are not eligible for Optional insurance.

(e) Individuals insured by this subpart are not considered employees for the purpose of this part.

(f) Eligibility for insurance under this subpart depends on the availability of funds under section 599C(e) of Pub. L. 101–513 (104 Stat. 2035).

§ 870.1004 Effective date of insurance.

Insurance under this subpart was effective on August 2, 1990, for hostages in Iraq and Kuwait and on June 1, 1982, for hostages captured in Lebanon, unless the U.S. Department of State sets a later date.

§ 870.1005 Premiums.

(a) Government contributions and employee withholdings required under subpart D of this part are paid from the funds provided under section 599C(e) of Pub. L. 101–513 (104 Stat. 2035).

(b) If an individual isn't insured for the full pay period, premiums are paid only for the days he/she is actually insured. The daily premium is the monthly premium multiplied by 12 and divided by 365.

(c) OPM may accept the payments required by this section in advance from a State Department appropriation, if necessary to fund the 12-month period of coverage beginning the earlier or:

(1) The day after sanctions or hostilities end; or

(2) The day after the individual's hostage status ends.

(d) OPM will place any funds received under paragraph (c) of this section in an account set up for that purpose. OPM will make the deposit required under 5 U.S.C. 8714 from the account when the appropriate pay period occurs.

§ 870.1006 Cancellation of insurance.

(a) An individual who is insured under this subpart may cancel his/her insurance at any time by written request. The cancellation is effective on the 1st day of the pay period after the pay period in which the U.S. Department of State receives the request.

(b) Cancellation must be requested by the insured individual and cannot be requested by a representative acting on the individual's behalf.

(c) An individual who cancels the insurance under this section cannot obtain the insurance again, unless the U.S. Department of State determines that it would be against equity and good conscience not to allow the individual to be insured.

§ 870.1007 Termination and conversion.

(a) Insurance under this subpart terminates 12 months after hostage status ends, unless the individual cancels the insurance earlier.

(b) Insured individuals whose coverage terminates are eligible for the 31-day extension of coverage and conversion as set forth in subpart F of this part, unless the individual cancelled the coverage.

§ 870.1008 Order of precedence and designation of beneficiary.

Insurance benefits are paid under the order of precedence set forth in 5 U.S.C. 8705(a) and under the provisions of subpart H of this part.

§ 870.1009 Responsibilities of the U.S. Department of State.

(a) The U.S. Department of State functions as the ''employing office'' for individuals insured under this subpart.

(b) The U.S. Department of State must determine the eligibility of individuals under Pub. L. 101–513 (104 Stat. 2035) for insurance under this subpart. This includes determining whether an individual is barred from insurance under chapter 87 of title 5 U.S.C. because of other life insurance as provided in section 599C of Pub. L. 101–513 (104 Stat. 2035).

Subpart K—Living Benefits

§ 870.1101 Eligibility for a Living Benefit.

(a) Effective July 25, 1995, an insured individual who is certified by his/her doctor as terminally ill, as defined in § 870.101, may elect to receive a lump-sum payment of Basic insurance.

(b) Optional insurance is not available for payment as a Living Benefit.

(c)(1) The effective date of a Living Benefit election is the date on which the Living Benefit payment is cashed or deposited. Once an election becomes effective, it can't be revoked. No further election of Living Benefits can be made.

(2) If the insured individual dies before cashing or depositing the Living Benefit payment, the payment must be returned to OFEGLI.

(d) If the insured individual has assigned his/her insurance, he/she cannot elect a Living Benefit; nor can an assignee elect a Living Benefit on behalf of an insured individual.

(e) If an individual has elected a Living Benefit, he/she may assign his/her remaining insurance.

§ 870.1102 Amount of a Living Benefit.

(a)(1) An employee may elect to receive either:

(i) A full Living Benefit, which is all of his/her Basic insurance, or

(ii) A partial Living Benefit, which is a portion of his/her Basic insurance, in a multiple of $1,000.

(2) An annuitant or compensationer may only elect to receive a full Living Benefit.

(b) The amount of Basic insurance elected as a Living Benefit will be reduced by an actuarial amount representing the amount of interest lost to the Fund because of the early payment of benefits.

(c)(1) If an individual elects a full Living Benefit, the post-election BIA will be 0. If an employee elects a partial Living Benefit, the post-election BIA will be the BIA reduced in proportion to the amount of Basic insurance elected as a Living Benefit, as prescribed by Pub. L. 103–409 (108 Stat. 4231).

(2) The post-election BIA cannot change after the effective date of a Living Benefit election.

(d)(1) If an employee elects a full Living Benefit, Basic accidental death and dismemberment coverage terminates as of the effective date of the election.

(2) If an employee elects a partial Living Benefit, Basic accidental death and dismemberment coverage is reduced to equal the post-election BIA.

§ 870.1103 Election procedures.

(a) The insured individual must request information on Living Benefits and an application form directly from OFEGLI.

(b)(1) Only the insured individual can apply for a Living Benefit; no one can apply on his/her behalf.

(2) The insured individual must complete the first part of the application and have his/her physician complete the second part. The completed application must be submitted directly to OFEGLI.

(c)(1) OFEGLI reviews the application, obtains certification from the insured's employing office regarding the amount of insurance and the absence of an assignment, and determines whether the individual meets the requirements to elect a Living Benefit.

(2) If OFEGLI needs additional information, it will contact the insured or the insured's physician.

(3) Under certain circumstances, OFEGLI may require a medical examination before making a decision. In these cases, OFEGLI is financially responsible for the cost of the medical examination.

(d)(1) If the application is approved, OFEGLI sends the insured a check for the Living Benefit payment and an explanation of benefits.

(i) Until the check has been cashed or deposited, the individual may change his/her mind about electing a Living Benefit; if this happens, the individual must mark the check ''void'' and return it to OFEGLI.

(ii) Once the insured individual has chased or deposited the payment, the Living Benefit election becomes effective and cannot be revoked; OFEGLI then sends explanations of benefits to the insured's employing office, so it can make the necessary changes in withholdings and deductions.

(2) If the application is not approved, OFEGLI will notify the insured individual and the employing office. The decision is not subject to administrative review; however, the individual can submit additional medical information or reapply at a later date if future circumstances warrant.

PART 871—[REMOVED]

2. Part 871 is removed.

PART 872—[REMOVED]

3. Part 872 is removed.

PART 873—[REMOVED]

4. Part 873 is removed.

PART 874—[REMOVED]

5. Part 874 is removed.

[FR Doc. 97–24585 Filed 9–16–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2635

RINs 3209–AA00 and 3209–AA04

Removal of Superseded References to the Former Honorarium Ban, Revisions to Conform With Procurement Integrity Changes and Conflict-of-Interest Exemptions, and Other Updates

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is removing superseded references to the former statutory honorarium bar from the executive branch regulations on standards of ethical conduct and financial disclosure. In addition, revisions to the standards of conduct regulation are being made to reflect statutory changes on procurement integrity and a new regulation on conflict-of-interest exemptions. Finally, OGE is removing outdated references in the standards of conduct regulation to certain grandfathered agency regulations, and making other minor updates to references and text.

EFFECTIVE DATE: September 17, 1997.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attn.: Mr. G. Sid Smith. A copy of the OGE Memorandum noted in the **SUPPLEMENTARY INFORMATION** section below may be obtained from OGE's World Wide Web Site on the Internet at http://www.usoge.gov, from OGE's ethics bulletin board TEBBS (''The Ethics Bulletin Board System'') at 202–208–8030, or by contacting Mr. Smith at OGE.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Associate General Counsel,

Office of Government Ethics, telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: In *National Treasury Employees Union* v. *United States*, 513 U.S. 454 (1995), the U.S. Supreme Court overturned, as to most executive branch employees, the honorarium bar at 5 U.S.C. app., section 501(b) which had been enacted as part of the Ethics Reform Act of 1989. Subsequently, the Department of Justice determined that because of the scope of the Supreme Court decision, the ban on honoraria was inoperative as to all Government employees. See OGE Memorandum of February 28, 1996, to Designated Agency Ethics Officials, General Counsels and Inspectors General (#DO–96–012). This rulemaking removes the regulatory provisions which refer to the now-overturned honorarium bar in OGE's executive branchwide financial disclosure and standards of ethical conduct regulations as codified at 5 CFR parts 2634 and 2635. In a separate rulemaking document to be issued later, OGE will remove the primary (and now inoperative) executive branchwide regulatory provisions which implemented the old honorarium bar, along with various related provisions, in subpart B of 5 CFR part 2636.

The Office of Government Ethics is, in this current rulemaking document, also updating or eliminating superseded citations and related text in the OGE executive branchwide standards of ethical conduct regulation which refer to procurement integrity provisions revised by the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106), and to the old Code of Ethics for Government Service (Pub. L. 96–303) which was repealed by Pub. L. 104–179. Additionally, OGE is adding to the authority citation for the standards of conduct regulation a reference to 5 U.S.C. 7301, which provides that the President may prescribe regulations for the conduct of employees in the executive branch.

This rulemaking updates or adds certain other references in the standards of ethical conduct regulation, reflecting revisions to regulations of the Office of Personnel Management and the General Services Administration. Additionally, it includes several citations and related text changes to account for the new OGE final regulation at 5 CFR part 2640, which implemented 18 U.S.C. 208 (official actions affecting a personal financial interest) by providing general interpretation, executive branchwide exemptions which have replaced any agency regulatory exemptions, and assistance for agencies in granting individual waivers. Finally, OGE is removing outdated notes and related appendixes which refer to certain agency regulations that were temporarily ''grandfathered'' when OGE first issued the executive branchwide standards of conduct in 1992 (with subsequent grandfathering extensions through November 1, 1996).

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice and delayed effective date are being waived because these technical amendments to certain OGE regulations concern matters of agency organization, practice and procedure. Furthermore, it is in the public interest that the obsolete provisions be removed, the other out-of-date citations be updated, and the few other passages be clarified as soon as possible.

Executive Order 12866

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this technical amendments rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and record keeping requirements, Trusts and trustees.

5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: July 18, 1997.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending parts 2634 and 2635 of chapter XVI of 5 CFR as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2634.105 [Amended]

2. Section 2634.105 is amended by removing the last sentence of paragraph (i).

PART 2635—[AMENDED]

3. The authority citation for part 2635 is revised to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2635.202 [Amended]

4. Section 2635.202 is amended by adding the word ''and'' following the closing semicolon in paragraph (c)(4)(i), by removing the word ''and'' at the end of paragraph (c)(4)(ii) and adding in its place the word ''or'', and by removing paragraph (c)(4)(iii).

§ 2635.204 [Amended]

5. Section 2635.204 is amended by removing Example 5 following paragraph (a), and by removing at the end of paragraph (l)(1) the terms ''§§ 410.701 through 410.706 of this title'' and adding in their place the terms ''part 410 of this title''.

6. Section 2635.401 is amended by adding a sentence at the end of the section, to read as follows:

§ 2635.401 Overview.

* * * See also part 2640 of this chapter, for additional guidance amplifying § 2635.402.

7. Section 2635.402 is amended by adding the words ''or determine that an exemption applies'' before the comma after the word ''waiver'' in the second

sentence of the note following paragraph (a), by adding the words ''or exemption'' following the word ''waiver'' in the first sentence of the introductory text of paragraph (c), by adding the words ''*or exemptions from*'' between the words ''*of*'' and ''*disqualification*'' in the heading of paragraph (d), by adding the word ''exemption'' following the word ''regulatory'' in the introductory text of paragraph (d), by adding the sentence ''See also subpart C of part 2640 of this chapter, for additional guidance.'' at the end of paragraph (d)(2)(ii), by adding the sentence ''See also subpart C of part 2640 of this chapter, for additional guidance.'' at the end of paragraph (d)(3)(ii), and by revising paragraph (d)(1) to read as follows:

§ 2635.402 Disqualifying financial interests.

* * * * *

(d) * * *

(1) *Regulatory exemptions.* Under 18 U.S.C. 208(b)(2), regulatory exemptions of general applicability have been issued by the Office of Government Ethics, based on its determination that particular interests are too remote or too inconsequential to affect the integrity of the services of employees to whom those exemptions apply. See the regulations in subpart B of part 2640 of this chapter, which supersede any preexisting agency regulatory exemptions.

* * * * *

§ 2635.403 [Amended]

8. Section 2635.403 is amended by adding the words ''issued after February 3, 1993'' before the comma after the words ''supplemental agency regulation'' in the first sentence of paragraph (a), and by removing the note following paragraph (a).

9. The note following paragraph (b) of section 2635.501 is amended by adding the words ''or exemption'' before the comma after the word ''waiver'' in the fourth sentence, by removing the word ''respectively'' in the fourth sentence, and by adding a new sentence at the end of that note, to read as follows:

§ 2635.501 Overview.

* * * * *

(b) * * *

Note: * * * Similarly, where the employee meets all prerequisites for the application of one of the exemptions set forth in subpart B of part 2640 of this chapter, that also constitutes a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

10. Section 2635.602 is amended by revising the last sentence of the note following the introductory text and the last sentence of paragraph (a)(2) to read as follows:

§ 2635.602 Applicability and related considerations.

* * * * *

Note: * * * An employee may, however, be subject to other statutes which impose requirements on employment contacts or discussions, such as 41 U.S.C. 423(c), applicable to agency officials involved in certain procurement matters.

(a) * * *

(2) * * * Employees are cautioned that they may be subject to additional statutory prohibitions on post-employment acceptance of compensation from contractors, such as 41 U.S.C. 423(d).

* * * * *

11. Section 2635.605 is amended by adding at the end of paragraph (a) two sentences to read as follows:

§ 2635.605 Waiver or authorization permitting participation while seeking employment.

(a) * * * See also subpart C of part 2640 of this chapter. For certain employees, a regulatory exemption under the authority of 18 U.S.C. 208(b)(2) may also apply (see subpart B of part 2640 of this chapter).

* * * * *

§ 2635.606 [Amended]

12. Section 2635.606 is amended by adding the phrase '', or by a regulatory exemption under the authority of 18 U.S.C. 208 (b)(2)'' between the terms ''(b)(3)'' and the period at the end of the first sentence of paragraph (a), by adding the phrase ''and exemptions'' between the words ''waivers'' and ''are'' in the second sentence of paragraph (a), and by adding a new sentence ''See also subparts B and C of part 2640 of this chapter.'' at the end of paragraph (a).

§ 2635.704 [Amended]

13. Section 2635.704 is amended by removing the citation term ''201–21.601'' in Example 1 following paragraph (b)(2) and adding in place thereof the citation term ''101–35.201'', and by removing the terms ''chapter 252 of the Federal Personnel Manual'' in Example 3 following paragraph (b)(2) and adding in their place the terms ''Office of Personnel Management regulations at part 251 of this title''.

§ 2635.801 [Amended]

14. Section 2635.801 is amended by adding the word ''and'' after the closing semicolon in paragraph (d)(7), by removing paragraph (d)(8), and by redesignating paragraph (d)(9) as paragraph (d)(8).

§ 2635.803 [Amended]

15. Section 2635.803 is amended by adding the words ''issued after February 3, 1993'' before the comma after the word ''regulation'' in the first sentence, and by removing the note at the end of the section.

§ 2635.805 [Amended]

16. Section 2635.805 is amended by removing the phrase ''result in compensation for an appearance in violation of § 2636.201 of this chapter or'' in the introductory text of paragraph (c).

§ 2635.807 [Amended]

17. Section 2635.807 is amended by removing paragraph (a)(1)(i), by redesignating paragraphs (a)(1)(ii) and (a)(1)(iii) as paragraphs (a)(1)(i) and (a)(1)(ii), respectively, by removing Example 1 following newly designated paragraph (a)(1)(ii), and by removing the last sentence of Example 1 following paragraph (a)(3)(ii).

18. Section 2635.902 is amended by removing and reserving paragraphs (l) and (n), and by revising paragraphs (f), (h) and (bb) to read as follows:

§ 2635.902 Related statutes.

* * * * *

(f) The prohibition on certain former agency officials' acceptance of compensation from a contractor (41 U.S.C. 423(d)).

* * * * *

(h) The actions required of certain agency officials when they contact, or are contacted by, offerors or bidders regarding non-Federal employment (41 U.S.C. 423(c)).

* * * * *

(l) [Reserved]

* * * * *

(n) [Reserved]

* * * * *

(bb) The prohibitions on disclosing and obtaining certain procurement information (41 U.S.C. 423(a) and (b)).

* * * * *

Appendixes A, B, C, and D [Removed]

19. Appendixes A, B, C and D to part 2635 are removed.

[FR Doc. 97–24607 Filed 9–16–97; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 997 and 998

[Docket No. FV97–998–3 IFR]

Amended Assessment Rate for Domestically Produced Peanuts Handled by Persons Not Subject to Marketing Agreement No. 146, and for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the administrative assessment rate established for the Peanut Administrative Committee (Committee) under Marketing Agreement No. 146 (agreement) for the 1997–98 and subsequent crop years. The Committee is responsible for local administration of the agreement which regulates the handling of peanuts grown in 16 States. Authorization to assess peanut handlers who have signed the agreement enables the Committee to incur expenses that are reasonable and necessary to administer the program. The agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (Act). The Act also requires the Department of Agriculture (Department) to impose the same administrative assessment rate on assessable peanuts received or acquired by handlers who have not signed the agreement. The 1997–1998 crop year covers the period July 1 through June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective September 18, 1997. Comments received by October 17, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; Fax (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tammie M. Bryant, Program Assistant, or Jim Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, DC Marketing Field Office, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–1755, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereafter referred to as the ''Act''; and under Marketing Agreement No. 146 (7 CFR part 998) regulating the quality of domestically produced peanuts.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in § 998.31 (c) and (d), are subject to assessments. It is intended that the assessment rates issued herein will be applicable to all assessable peanuts beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This rule decreases the assessment rate established for the Committee for the 1997–98 and subsequent crop years from $0.70 to $0.35 per net ton.

The agreement provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Funds to administer the agreement program are paid to the Committee and are derived from signatory handler assessments. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods and services in their local areas and, thus, are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who are directly affected have voluntarily signed the agreement authorizing the expenses that may be incurred and the imposition of assessments.

For the 1997–98 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year indefinitely unless modified, suspended, or terminated by the Secretary, upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 30, 1997, and unanimously recommended 1997–98 administrative expenditures of $525,000, and an administrative assessment rate of $0.35 per net ton of assessable farmers' stock peanuts received or acquired by handlers. The Committee also voted not to recommend an assessment rate for indemnification for handler losses due to aflatoxin contamination. Adequate funds are included in the Committee's indemnification reserve for such expenses during the 1997–98 crop year. In comparison, last year's budgeted administrative expenditures were $1,025,500. Major expenditures recommended by the Committee for the 1997–98 crop year compared with those budgeted for 1996–97 (in parentheses)include: $55,000 for executive salaries ($112,450), $50,000 for clerical salaries ($131,500), $125,000 for field representatives (3 compliance officers rather than 7 fieldmen) salaries ($296,700), $18,000 for payroll taxes ($42,000), $65,000 for employee benefits, ($148,000), $40,000 for committee members travel ($40,000), $5,000 for staff travel ($5,000), $60,000 for field representatives travel ($110,000), $9,800 for insurance and bonds ($9,800), $19,000 for office rent and parking ($46,200), $10,000 for office supplies and stationery ($14,000), $10,400 for postage and mailing ($13,200), $11,000 for telephone and telegraph ($15,000), $6,000 for repairs and maintenance agreements ($6,000), $10,400 for the audit fee ($10,400), and $15,800 for the contingency reserve ($10,250).

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. Farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than

from those described in § 998.31 (c) and (d), are subject to the assessments. Farmers' stock peanuts received or acquired by non-signatory handlers by law are subject to the same assessment rate. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Peanut receipts and acquisitions for the year under the agreement are estimated at 1,500,000 tons, which should provide $525,000 in assessment income. Approximately 95 percent of the domestically produced peanut crop is marketed by handlers who are signatory to the agreement. The remaining 5 percent of the U.S. peanut crop is marketed by non-signer handlers.

The Act provides for mandatory assessment of farmer's stock peanuts acquired by non-signatory peanut handlers. Section 608b of the Act specifies that: (1) Any assessment (except indemnification assessments) imposed under the agreement on signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

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

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial 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. There are approximately 80 peanut handlers who are subject to regulation under the agreement or the non-signer program and approximately 25,000 peanut producers in the 16-State production area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Approximately 25 percent of the signatory handlers, virtually all of the non-signer handlers, and most of the producers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent crop years from $0.70 to $0.35 per net ton. The recommended assessment rate is $0.35 less than the rate currently in effect.

The Committee discussed alternatives to this rule, including alternative expenditure levels. The Committee also discussed the alternative of not decreasing the assessment rate. However, it decided against this course of action. The peanut industry has been in a state of economic decline since 1991, with the Committee attempting to cut costs where possible. The Committee's budget for 1997–98 is $525,000; this is $500,500 less than the amount budgeted for 1996–97. Based on an estimated 1,500,000 net tons of assessable peanuts, income derived from handler assessments during 1997–98 will be adequate to cover budgeted expenses.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some costs on handlers, the costs are minimal and in the form of a uniform assessment on all handlers. Some of these costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the agreement. This administrative assessment is required by law to also be applied uniformly to all non-signatory handlers and should be of benefit to all. In addition, the Committee's meeting was widely publicized throughout the peanut industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 30, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action reduces the current assessment rate; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) the Act requires the Department to impose an administrative assessment on assessable peanuts received or acquired for the account of signatory and non-signatory handlers; (4) the 1997–98 crop year began on July 1, 1997, and the agreement and the Act require that the rate of assessment for each crop year apply to all assessable peanuts received or acquired during such crop year; (5) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (6) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 997 and 998 are amended as follows:

1. The authority citation for 7 CFR parts 997 and 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

§ 997.101 [Amended]

2. Section 997.101 is amended by removing ''July 1, 1996,'' and adding in its place ''July 1, 1997,'' and by removing ''$0.70'' and adding in its place ''$0.35.''

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

§ 998.409 [Amended]

3. Section 998.409 is amended by removing ''July 1, 1996,'' and adding in its place ''July 1, 1997,'' and by removing ''$0.70'' and by adding in its place ''$0.35.''

Dated: September 12, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–24689 Filed 9–16–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 97–009–2]

Brucellosis in Cattle; State and Area Classifications; Tennessee

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Tennessee from Class A to Class Free. We have determined that Tennessee meets the standards for Class Free status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from Tennessee.

EFFECTIVE DATE: The interim rule was effective on February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective February 28, 1997, and published in the **Federal Register** on March 6, 1997 (62 FR 10192–10193, Docket No. 97–009–1), we amended the brucellosis regulations in 9 CFR part 78 by removing Tennessee from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a).

Comments on the interim rule were required to be received on or before May 5, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

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

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

List of Subjects in 9 CFR Part 78

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

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 62 FR 10192–10193 on March 6, 1997.

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

Done in Washington, DC, this 11th day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–24668 Filed 9–16–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–021–2]

Change in Disease Status of Northern Ireland and Norway Because of Exotic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by removing Northern Ireland and Norway from the list of countries that are considered to be free of exotic Newcastle disease. We took this action based on reports we received from the Office International des Epizooties and the Governments of Northern Ireland and Norway that outbreaks of exotic Newcastle disease have occurred in Northern Ireland and Norway. This action restricts the importation of live birds, poultry, and poultry products into the United States from Northern Ireland and Norway.

EFFECTIVE DATE: The interim rule was effective on April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective April 15, 1997, and published in the **Federal Register** on April 18, 1997 (62 FR 19032–19033, Docket No. 97–021–1), we amended the regulations in 9 CFR part 94 by removing Northern Ireland and Norway from the list of countries in § 94.6(a)(2) that are considered to be free of exotic Newcastle disease.

Comments on the interim rule were required to be received on or before June 17, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

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

Further, for this action, the Office of Management and Budget has waived the

review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 62 FR 19032–19033 on April 18, 1997.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 11th day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–24669 Filed 9–16–97; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–0926]

Availability of Funds and Collection of Checks; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction to an amendment.

SUMMARY: The Board is correcting an amendment to Regulation CC (Availability of Funds and Collection of Checks) that appeared in the **Federal Register** on March 24, 1997. This document corrects an error that appeared in Model Availability Policy Disclosure C–5 concerning statutory limits on funds availability of all deposits.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Obrea Poindexter, Staff Attorney (202/452–3667), Division of Consumer and Community Affairs. For the hearing impaired *only*, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On March 24, 1997 (62 FR 13801), the Board published amendments to Regulation CC (12 CFR part 229) to clarify the regulation and, in specified circumstances, reduce the compliance burden for depository institutions. Appendix C to Part 229 contains model availability policy disclosures, clauses and notices to facilitate compliance by banks with the disclosure requirements of Regulation CC. This document corrects an error that appeared in Model Availability Policy Disclosure C–5 concerning statutory limits on funds availability of all deposits.

In Model Availability Policy Disclosure C–5, the sentence that begins ''If you deposit both categories of checks * * *'' was inadvertently placed under the subheading ''Longer Delays May Apply.'' As the sentence does not pertain to exception holds pursuant to the funds availability policy, it is removed. The sentence, which stipulates the availability policy for the deposit of both local and nonlocal checks, should have instead appeared below the heading ''Other Check Deposits.'' To accommodate the sentence, a new subheading has been added, titled ''3. Local and nonlocal checks,'' and the sentence is placed under the newly formed subheading.

As this is a technical correction that does not affect the substance of Regulation CC, 5 U.S.C. 553 does not require publication for comment.

Banks that use earlier versions of the model forms are protected from civil liability under § 229.21(e), but all banks are encouraged to use the new versions when reordering or reprinting supplies.

Final Regulatory Flexibility Analysis

The technical correction should not have a negative impact on small institutions.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 12 CFR part 229 is amended as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

1. The authority citation for Part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In Appendix C to part 229, the Model Availability Policy Disclosure C–5 is revised to read as follows:

Appendix C to Part 229—Model Availability Policy Disclosures, Clauses, and Notices

* * * * *

C–5—Holds to Statutory Limits on All Deposits

Your Ability To Withdraw Funds

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability Of A Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you.
- Wire transfers.
- Checks drawn on (*bank name*) [unless (*any limitations related to branches in different states or check processing regions*)].

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

- Cash.
- State and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].
- Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

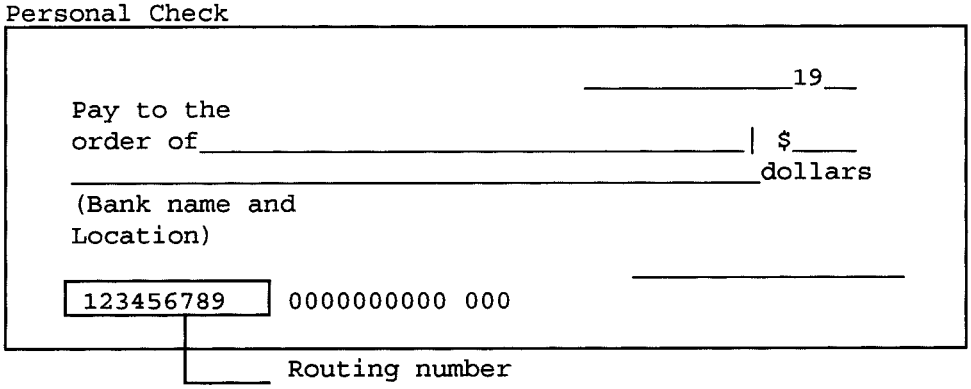
If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

Other Check Deposits

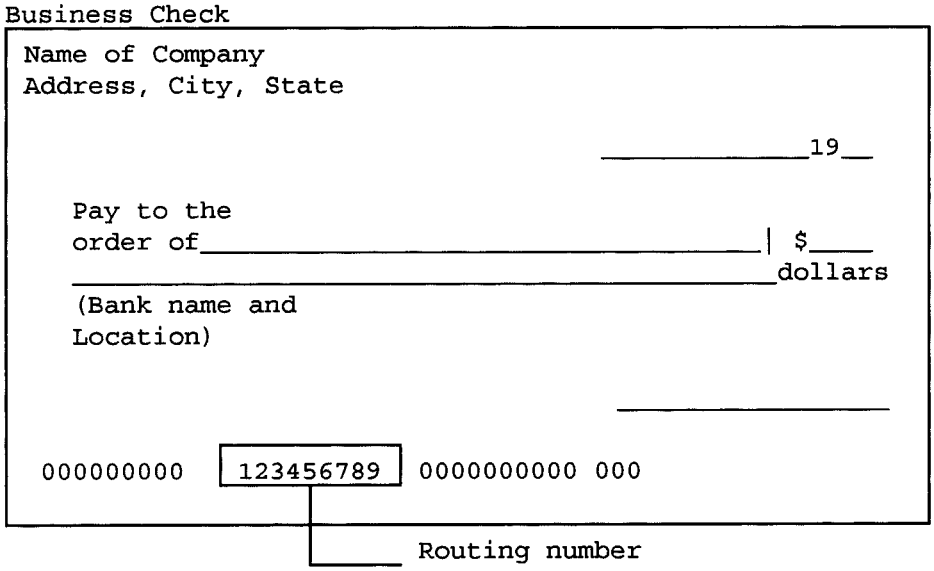
The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

BILLING CODE 6210–01–P

Personal Check



Business Check



BILLING CODE 6210–01–C

If the first four digits of the routing number (1234 in the examples above) are (*list of local numbers*), then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked ''payable through'' and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal checks available as follows.

1. Local checks. The first $100 from a deposit of local checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the second business day after the day of your deposit.

For example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Wednesday.

2. Nonlocal checks. The first $100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the fifth business day after the day of your deposit.

For example, if you deposit a $700 nonlocal check on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Monday of the following week.

3. Local and nonlocal checks. If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

Special Rules For New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

* * * * *

By order of the Board of Governors of the Federal Reserve System, under delegated authority, September 12, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–24702 Filed 9–16–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–239–AD; Amendment 39–10136; AD 97–19–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to include procedures that will ensure that the center tank fuel pumps are not operated with less than 1,000 pounds of fuel in the center tank. This amendment is prompted by a report indicating that a fuel pump failed due to damage to an impeller unit and pumping unit housing caused by a loose diffuser ring in the fuel pump assembly. The actions specified in this AD are intended to ensure the flight crew is advised of procedures that will ensure that the center tank fuel pumps are not operated with less than 1,000 pounds of fuel, which will prevent ignition of fuel vapors due to the generation of sparks and a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation.

DATES: Effective October 2, 1997.

Comments for inclusion in the rules docket must be received on or before November 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–239–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report of failure of an override and jettison fuel pump on a Boeing Model 767 series airplane. Investigation revealed that the screws that attach the inlet diffuser assembly to the pumping unit housing became loose and were ingested into the fuel pump assembly. Loose screws caused the diffuser ring to become loose and contact the impeller, which damaged the impeller and pumping unit housing and caused the fuel pump to seize. During dry fuel pump operation, a loose diffuser ring also could cause metal-to-metal contact. This condition, if not corrected, could result in the generation of sparks and a potential ignition source inside the fuel tank.

Other Relevant Rulemaking

The conditions described previously were addressed in AD 94–11–05, amendment 39–8921 (59 FR 27970, May 31, 1994), which is applicable to Boeing Model 767–200 and 767–300 series airplanes. That AD requires repetitive inspections of the pumping unit assembly on the override and jettison fuel boost pump assemblies to detect looseness of the screws that attach the inlet diffuser assembly to the pumping unit housing, and repair or replacement of the pumping unit assembly with a serviceable assembly, if necessary. For certain airplanes, that AD also provides for deactivation of the center wing fuel tank as an alternative to the repetitive inspections. The actions specified by that AD are intended to prevent the generation of sparks and a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation.

FAA's Findings

Since the issuance of AD 94–11–05, an alternative method of compliance was granted that entailed fuel pump modifications, which alleviated the need for repetitive inspections of the fuel pump. However, the previously described report of failure of an override fuel pump occurred on a unit that had incorporated those modifications. The FAA has determined that, even if the override fuel pump fails, operation of the center tank fuel pumps with no less than 1,000 pounds of fuel will prevent ignition of fuel vapors due to the generation of sparks inside the fuel tank due to metal-to-metal contact. Therefore, the FAA has determined that a revision to the FAA-approved Airplane Flight Manual (AFM) for Model 767 series airplanes is necessary to ensure that the center tank fuel pumps are not operated with less than 1,000 pounds of fuel in the center tank.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 767 series airplanes of the same type design, this AD is being issued to prevent the generation of sparks and a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation. This AD requires revising the AFM to include procedures that will ensure that the center tank fuel pumps are not operated with less than 1,000 pounds of fuel in the center tank.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–239–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–19–15 Boeing: Amendment 39–10136. Docket 97–NM–239–AD.

Applicability: All Model 767 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the generation of sparks and a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation, accomplish the following:

(a) Within 14 days after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

If the center tank fuel pumps are to be used, there must be at least 5,000 pounds (2,267 kilograms) of fuel in the center tank prior to engine start.

The center fuel pumps must be selected ''OFF'' at or greater than 1,000 pounds (453 kilograms) of fuel in the center tank. For airplanes not equipped with a center tank scavenge system, this 1,000 pounds (453 kilograms) of center tank fuel must be considered unusable.

Note: On all Model 767–200ER/300ER series airplanes and some Model 767–200/300 series airplanes, a scavenge system, operating with fuel pressure from the main wing tank pumps, will operate automatically to transfer any fuel remaining in the center tank to the main tanks. Fuel transfer begins when the main tanks are approximately half empty.

(2) Revise the Limitations Section of the FAA-approved AFM entitled ''FUEL SYSTEM, FUEL USAGE II (fuel in center tank),'' to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

''Use the center tank fuel for all operations with all operable fuel pumps ''ON'' and the cross feed valve(s) closed until the center tank fuel quantity is 1,000 pounds (453 kilograms) or greater, then use FUEL USAGE I.

Do not operate the center tank fuel pumps with less than 1,000 pounds (453 kilograms) of fuel in the center tank.

Note: The crossfeed valve(s) is open for minimum fuel operation, and may be opened to correct fuel imbalance.''

(3) Revise the Normal Procedures Section of the FAA-approved AFM to include the following procedure. This may be accomplished by inserting a copy of this AD in the AFM.

''Use of Fuel From the Center Tank

When the center tank approaches ''EMPTY'' during normal use or fuel transfer, select both center tank fuel pump switches ''OFF'' with the first occurrence of any of the following:

- The center tank fuel reaches 1,000 pounds (453 kilograms);
- Either of the center tank fuel pump ''PRESS'' lights illuminate; or
- Either the ''CTR L FUEL PUMP'' or ''CTR R FUEL PUMP'' EICAS message is displayed.''

(4) Revise the Non-Normal Procedures Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

''Center Tank Fuel Pump Faults

A center tank fuel pump failure may have occurred if a fuel pump pressure light illuminates when there is ample fuel in the tank. If a fault is suspected, select the affected pump ''OFF'' and do not re-select ''ON.'' If the affected circuit breaker is tripped, do not reset. Select fuel crossfeed valve(s) ''OPEN.''

Attempted operation of a faulted center tank pump could ignite fuel tank vapors in an empty or nearly empty tank.''

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

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

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

(d) This amendment becomes effective on October 2, 1997.

Issued in Renton, Washington on September 11, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24630 Filed 9–16–97; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1014

Privacy Act of 1974; Specific Exemptions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (''Commission'') is issuing a rule to exempt a system of records from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a (''Privacy Act''), to the extent that the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for law enforcement purposes.

DATES: Effective September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301–504–0980.

SUPPLEMENTARY INFORMATION:

The Consumer Product Safety Commission, under a variety of statutes, is authorized to enforce its statutes and regulations through administrative actions and civil and criminal litigation. Preparation for, and conduct of, enforcement actions requires the compilation of investigatory materials such as memoranda, investigative reports, correspondence, test reports, injury reports, and the like in a manner that facilitates easy retrieval. The two offices of the Commission that conduct enforcement actions, the Office of Compliance and the Office of the General Counsel, maintain such documentation in a system of records, identified as ''Enforcement and Litigation Files—CPSC–7.'' Disclosure of information in these investigatory files or disclosure of the identity of confidential sources could seriously undermine the effectiveness of the Commission's enforcement actions. For example, premature disclosure of information in such files could enable subjects of an enforcement action to conceal or destroy evidence, or escape prosecution. Premature disclosure of this information could also lead to the possible intimidation of, or harm to, informants, witnesses, or Commission personnel and their families. Further, the imposition of certain Privacy Act restrictions on the manner in which information is collected, verified, or retained could significantly impede the effectiveness of an enforcement action.

Section (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), provides the authority for agencies to exempt records containing investigatory material compiled for law enforcement purpose from certain other provisions of the Act. 16 CFR 1014.12 currently exempts other systems of records from certain requirements of the Privacy Act. The Commission proposed on June 2, 1997, 62 FR 29680, to add a new paragraph (c) to § 1014.12 to exempt the enforcement and litigation files from certain requirements of the Privacy Act.

No comments have been received and the Commission is now issuing the proposal as a final rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant impact on a substantial number of small entities. Since the rule does not require any actions to be taken, the Commission also certifies that this rule will have no environmental impact, will not preempt any state or local laws or regulations, will have no impact on family maintenance and well being, and no implications for federalism.

List of Subjects in 16 CFR Part 1014

Privacy.

For the reason stated in the preamble, Chapter II, Title 16 of the Code of Federal Regulations is amended as follows:

PART 1014—POLICIES AND PROCEDURES IMPLEMENTING THE PRIVACY ACT OF 1974

1. The authority citation for part 1014 continues to read as follows:

Authority: Privacy Act of 1974 (5 U.S.C. 552a).

§ 1014.12 [Amended]

2. Section 1014.12, *Specific exemptions*, is amended by adding paragraph (c) to read as follows:

* * * * *

(c) *Enforcement and Litigation Files—CPSC–7.* All portions of this system of records that fall within 5 U.S.C. 552a(k)(2) (investigatory materials compiled for law enforcement purposes) are exempt from 5 U.S.C. 552a(c)(3) (mandatory accounting of disclosures); 5 U.S.C. 552a(d) (access by individuals to records that pertain to them); 5 U.S.C. 552a(e)(1) (requirement to maintain only such information as is relevant and necessary to accomplish an authorized agency purpose); 5 U.S.C. 552a(e)(4)(G) (mandatory procedures to notify individuals of the existence of records pertaining to them); 5 U.S.C. 552a(e)(4)(H) (mandatory procedures to notify individuals how they can obtain access to and contest records pertaining to them); 5 U.S.C. 552a(e)(4)(I) (mandatory disclosure of records source categories); and the Commission's regulations in 16 CFR part 1014 that implement these statutory provisions.

Dated: September 12, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–24715 Filed 9–16–97; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Office of the Commissioner

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the general redelegations of authority from the Commissioner of Food and Drugs (the Commissioner) to other officers of FDA. The amendment delegates to the Deputy Commissioner for Policy and the Associate Commissioner for Policy Coordination authority to certify that a proposed or final rule, if issued, will not have a significant economic impact on a substantial number of small entities. Furthermore, the Deputy Commissioner for Policy has redelegated the aformentioned authority to certain FDA officials authorized to issue **Federal Register** documents. These actions are necessary to ensure the accuracy of the regulations.

EFFECTIVE DATE: June 25, 1997.

FOR FURTHER INFORMATION CONTACT:

Edwin V. Dutra, Regulations Policy and Management Staff (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480, or

Loretta W. Davis, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4809.

SUPPLEMENTARY INFORMATION: FDA is amending its delegations of authority regulations by revising 21 CFR 5.20 and by adding § 5.100 to reflect additional authorities under the Regulatory Flexibility Act (5 U.S.C. 605(b)). On

November 8, 1996, the Commissioner delegated to the Deputy Commissioner for Policy and the Associate Commissioner for Policy Coordination his authority, as head of the agency under the Regulatory Flexibility Act (5 U.S.C. 605(b)), to certify that a proposed or final rule, if issued, will not have a significant economic impact on a substantial number of small entities. The Commissioner authorized the Deputy Commissioner for Policy and the Associate Commissioner for Policy Coordination to redelegate this authority.

Moreover, in a memorandum dated June 25, 1997, the Deputy Commissioner for Policy redelegated to certain FDA officials authorized to issue **Federal Register** documents the authority to make a certification under 5 U.S.C. 605(b) for any notice of proposed rulemaking and for any final rule that such official is authorized to issue. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

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

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

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

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

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

2. Section 5.20 is amended by adding paragraph (f)(4) to read as follows:

§ 5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.

(f) * * *

(4) The Deputy Commissioner for Policy and the Associate Commissioner for Policy Coordination are authorized under the Regulatory Flexibility Act (5 U.S.C. 605(b)) to certify that a proposed or final rule, if issued, will not have a significant economic impact on a substantial number of small entities. The delegation excludes the authority to submit reports to Congress.

* * * * *

3. Section 5.100 is added to subpart C to read as follows:

§ 5.100 Officials authorized to make certification under 5 U.S.C. 605(b) for any proposed and final rules.

The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to decisions made under the Regulatory Flexibility Act (5 U.S.C. 605(b)), to certify that a proposed or final rule, if issued, will not have a significant economic impact on a substantial number of small entities:

(a) The Associate Commissioner for Regulatory Affairs (ACRA).

(b) The Director, Center for Biologics Evaluation and Research (CBER).

(c) The Director, Center for Drug Evaluation and Research (CDER).

(d) The Director, Center for Devices and Radiological Health (CDRH).

(e) The Director, Center for Food Safety and Applied Nutrition (CFSAN).

(f) The Director, Center for Veterinary Medicine (CVM).

(g) Other FDA Officials Authorized to Issue **Federal Register** Documents.

Dated: September 9, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–24582 Filed 9–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice No. 2588]

Office of Information Resources Management Programs and Services; Access to Information—Freedom of Information Provisions

AGENCY: Office of Information Resources Management Programs and Services, Department of State.

ACTION: Interim rule with request for comment.

SUMMARY: The Department of State is hereby promulgating interim rules and soliciting comments prior to adoption of final rules to implement its obligations under the Freedom of Information Act relating to requests for expeditious processing of requests.

DATES: The interim rule is effective on October 2, 1997. Comments must be submitted on or before November 17, 1997.

ADDRESSES: Written comments may be mailed or delivered to the Information and Privacy Coordinator, Office of Information Resources Management Programs and Services, Room 1239, Department of State, 2201 C Street, N.W., Washington, D.C. 20520–1239.

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Acting Director, Office of Information Resources Management Programs and Services, Room 1239, Department of State, 2201 C Street, NW, Washington, D.C. 20520–1239; telephone (202) 647–7740; facsimile (202) 647–5094.

SUPPLEMENTARY INFORMATION: This document promulgates interim rules and seeks public comment. The agency is compelled to comply with the mandates of the Electronic Freedom of Information Act (E–FOIA) Amendments of 1996 legislation, and applicable deadlines, which require new procedures to become effective October 2, 1997. This interim rule revises 22 CFR 171.12 to bring these regulations into conformity with the new statutory provisions set forth in the (E–FOIA) Amendments related to time limits for response and consideration of requests for expedited processing of Freedom of Information Act inquiries. Therefore, the agency waives publication of a proposed rule in accordance with the ''good cause'' provision of the Administrative Procedure Act, 5 U.S.C. 553. The rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Nor does it impose unfunded mandates under the Unfunded Mandates Reform Act. This rule does not alter substantially any existing rights of members of the public. In addition, the rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. The rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Classified information, Confidential business information, Freedom of information, Privacy.

For the reasons set forth in the preamble, 22 CFR part 171 is amended as follows:

PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for Part 171 is revised to read as follows:

Authority: 5 U.S.C. 551 *et seq.*, 552, 552a; 5 U.S.C. App. 201; E.O.12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O.12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

Subpart B—Freedom of Information Provisions

2. Section 171.12 is revised to read as follows:

§ 171.12 Time limits/expedited processing.

(a) Whenever possible, the Department will furnish the requested records within 20 days (excluding Saturdays, Sundays, and legal public holidays), except as cited in § 171.4.

(b) A separate queue shall be established for requests meeting the test for expeditious processing. Requests for expedited processing shall be granted to the requester after the requester has demonstrated that a compelling need exists. A notice of the determination as to whether to grant expedited processing shall be provided to the requester within ten (10) days of the date of the request. The request for expedited processing shall set forth with specificity the relevant facts upon which the requester relies and demonstrate to the Department that substantive records relevant to the stated needs may exist and be deemed releasable.

(c) A ''compelling need'' is deemed to exist where the requester can demonstrate one of the following:

(1) Failure to obtain requested information on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. News media requesters would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

(i) *Urgently needed.* The information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the newsbreaking nature of the information;

(ii) *Actual or alleged Federal Government activity.* The information concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress;

(3) Substantial due process rights of the requester would be impaired by the failure to process immediately; or

(4) Substantial humanitarian concerns would be harmed by the failure to process immediately.

(d) A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the ten (10) days required for decisions on expedited access.

(e)(1) The Department's decision to deny expedition may be appealed to the Chief of the Requester Liaison Division, Room 1512, Department of State, 2201 C Street, NW., Washington, D.C. 20520. Appeals should contain as much information and documentation as possible to support the request for expedited processing in accordance with the criteria set forth in paragraph (c) of this section.

(2) The Requester Liaison Division Chief will issue a final decision in writing within ten (10) days from the date on which the Department received the appeal.

Dated: September 3, 1997.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration.

[FR Doc. 97–24654 Filed 9–16–97; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–106–FOR]

Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving with exceptions a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of regulatory changes to implement the standards of the Federal Energy Policy Act of 1992, and the Code of Virginia. The amendment is intended to revise the State program to be consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16772) concerning subsidence damage.

EFFECTIVE DATE: September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated May 21, 1996 (Administrative Record No. VA–882), Virginia submitted amendments to the Virginia program concerning subsidence damage. The amendments are intended to make the Virginia program consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16722). Virginia stated that the proposed amendments implement the standards of the Federal Energy Policy Act of 1992, and sections 45.1–243 and 45.1–258 of the Code of Virginia.

Virginia also noted that the state has adopted a revised system for numbering the Virginia regulations. For the Virginia program, the prefix ''480–03–19.'' has been replaced with ''4 VAC 25–130–.'' The part of the existing Virginia numbering system that corresponds to the Federal number remains the same. For example, old ''480–03–19.700.5'' has become ''4 VAC 25–130–700.5.'' The Virginia Division of Mines,

Minerals and Energy (DMME) will be reprinting the Virginia program regulations to incorporate the new prefix, both in the numbering of the regulations and in references contained in the regulations. However, the DMME is continuing to use the ''480–03–19.'' prefix pending the reprint.

The proposed amendment was published in the June 11, 1996, **Federal Register** (61 FR 29506), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on July 11, 1996. The public comment period was reopened on July 24, 1996 (61 FR 38422), to accept additional comments on the proposed use of a 28-degree angle of draw with the rebuttable presumption of causation by subsidence provision. That comment period ended on August 8, 1996. On September 12, 1996 (61 FR 48110), OSM announced a scheduled public hearing on the proposed amendments. The hearing was held on September 18, 1996 (Administrative Record Number VA–896).

By letter dated July 11, 1996 (Administrative Record Number VA–894), OSM requested that Virginia provide additional information on the proposed amendments, including technical justification for the use of the 28 degree angle of draw. Virginia responded to that request for additional information by letter dated January 3, 1997 (Administrative Record Number VA–902). Virginia also submitted to OSM on March 20, 1997, changes to correct minor punctuation and typographical errors Administrative Record Number (VA–914). OSM reopened the public comment period on April 7, 1997, to provide for public comment on Virginia's technical justification of the proposed use of the 28 degree angle of draw. The comment period closed on April 22, 1997 (62 FR 16509).

III. Director's Findings

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

The amendments proposed by Virginia are as follows:

1. Section 480–03–19.700.5 Definitions

(a) ''Drinking, domestic or residential water supply'' has been added to mean water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

The Director finds this definition to be identical to and no less effective than the counterpart Federal definition at 30 CFR 701.5.

(b) ''Material damage, in the context of §§ 480–03–19.784.20 and 480–03–19.817.121'' of this chapter has been added to mean:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

The Director finds this definition to be substantively identical to and no less effective than the counterpart Federal definition at 30 CFR 701.5.

(c) ''Non-commercial building'' has been added to mean any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in § 480–03–19.700.5 of this chapter. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

The Director finds this definition to be substantively identical to and no less effective than the counterpart Federal definition at 30 CFR 701.5.

(d) ''Occupied residential dwelling and structures related thereto'' has been added to mean, for purposes of §§ 480–03–19.784.20 and 480–03–19.817.121, any building or other structures that, at the time the subsistence occurs, is used either temporally, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded (hereinafter referred to in this preamble as ''protected structure'').

The Director finds this definition to be substantively identical to and no less effective than the counterpart Federal definition at 30 CFR 701.5.

(e) ''Replacement of water supply'' has been added to mean, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the post mining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

The Director finds this definition to be identical to and no less effective than the counterpart Federal definition at 30 CFR 701.5.

2. Section 480–03–19.784.14 Hydrologic Information

Subsection (e) has been amended by adding new subsection (e)(3)(iv) to provide that the probable hydrologic consequences (PHC) determination shall contain findings on: ''Whether the underground mining activities conducted after October 24, 1992 may result in contamination, diminution, or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.''

The Director finds this provision to be identical to and no less effective than

the counterpart Federal provision at 30 CFR 784.14(e)(3)(iv).

3. Section 480–03–19.784.20 Subsidence Control Plan

The existing language of this provision is deleted and replaced by new language. New subsection (a) provides for a pre-subsidence survey that includes a map to identify structures, renewable resource lands and drinking, domestic and residential water supplies that subsidence may affect; an accompanying narrative; and a pre-subsidence survey of all non-commercial buildings or occupied residential dwellings and structures related thereto, that may be damaged by subsidence, and a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit and adjacent area that could be contaminated, diminished, or interrupted by subsidence.

Subsection (b) provides for a subsidence control plan. The subsidence control plan shall contain a description of the mining method; a map of underground workings showing areas of planned subsidence, and areas where measures to minimize subsidence and subsidence related damage; a description of the overlying rock strata that affect the likelihood or extent of subsidence and subsidence related damage; a description of monitoring if needed; a description of subsidence control measures, except for areas where planned subsidence is projected to be used; a description of the anticipated effects of planned subsidence, if any; a description of methods to be employed to minimize the effects of planned subsidence, or the written consent of the owner that such measures not be taken; a description of the measures to be taken to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures; and other information as specified by the Division of Mined Land Reclamation (DMLR).

The Director finds this provision to be substantively identical to and no less effective than the counterpart Federal provision at 30 CFR 784.20 concerning subsidence control plan.

4. Section 480–03–19.817.41 Hydrologic Balance Protection

New subsection (j) is added to provide that the permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the DMLR received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in § 480–03–19.784.14 and the geologic information concerning baseline hydrologic conditions required in § 480–03–19.784.22 will be used to determine the impact of mining activities upon the water supply.

The Director finds this provision to be substantively identical to and no less effective than the counterpart Federal provision at 30 CFR 817.41(j) concerning drinking, domestic or residential water supply.

5. Section 480–03–19.817.121 Subsidence Control

Subsection (a) concerning measures to prevent or minimize damage is amended by adding new language (at new subsection (a)(2)) to provide that planned subsidence must include measures to minimize material damage to protected structures, except if the permittee has written consent of the structure owners, or unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair, or the structure owners deny the permittee access to implement the measures to minimize material damage and the permittee provides written evidence of good faith efforts to obtain access.

The proposed language is substantively identical to and no less effective than the counterpart Federal language at 30 CFR 817.121(a)(2) with one exception. 30 CFR 817.121(a)(2) contains no counterpart to the proposed language that provides an exception to the requirement to include measures to minimize material damage to protected structures if the structure owners deny the permittee access to implement the measures to minimize material damage.

''Planned subsidence in a predictable and controlled manner'' includes longwall mining and pillar retreat mining. Mitigation efforts for longwall mining are performed on the surface. Such efforts include trenching, bracing or jacking of the protected structure. These mitigation measures remain in place while the ground underneath the structure subsides, keeping the structure level. For example, jacks cannot be placed in the underground mine because longwall machinery moves as one continuous unit and cannot ''skip'' over the area under the structure. Thus, if a permittee conducting longwall operations (''longwall permittee'') is denied access to a protected structure, it is not viable for the longwall permittee to place jacks under the structure or place braces/trenches around the structure. However, if the planned subsidence involves pillar retreat mining, then mitigation efforts could be performed underneath the protected structure regardless of whether or not a structure owner denied the permittee access to his structure. The permittee in a pillar retreat operation could protect the structure by either leaving the pillars of coal under and surrounding the protected structure or replacing the pillars of coal with a support. Thus, Virginia's proposal with regard to longwall mining operations is consistent with the federal rule at 30 CFR 817.121(a)(2) which requires measures to minimize subsidence damage only when such measures are ''consistent with the mining method employed'' and ''technologically feasible.''

OSM was also concerned about whether or not the structure owner would be notified by the longwall permittee of the consequences of failing to allow access for the placement of mitigation measures. Since Virginia's proposal had no direct federal counterpart, there was no direct federal notice counterpart. The Federal regulation at 30 CFR 784.20(a)(3) provide a relevant comparison. 30 CFR 784.20(a)(3) provides that, if an owner denies access for a pre-mining survey, the permittee must provide certain information to the landowner concerning the potential negative effect of their actions, but the lack of access does not prevent the permittee from mining. Virginia, by a letter dated January 3, 1997, (Administrative Record Number VA–902) clarified that under 480–03–19.817.121(a)(2)(iii), the permittee must provide a written document to the structure owner informing the owner of the consequences of denying access. Further, the permittee must provide Virginia with evidence documenting such notice.

Accordingly, the Director finds that with respect to longwall permittees, the proposed language is consistent with the Federal regulations and is approving 480–03–19.817.121(a)(2)(iii) to the extent it applies to longwall permittees. The Director notes that denial of entry to the longwall permittee to perform mitigation measures does not relieve the longwall permittee from the obligation to comply with the repair or compensation requirements of 30 CFR 817.121(c)(4).

Subseciton (c) has been revised by deleting the existing language and replacing new language. The new language provides for the repair of damage to surface lands; the repair or

compensation for damage to non-commercial buildings and dwellings and related structures; repair or compensation for damage to other structures; rebuttable presumption of causation by subsidence; approval of site-specific angle of draw; no presumption where access for pre-subsidence survey is denied; rebuttal of presumption; information to be considered in determination of causation; and adjustment of bond amount for subsidence damage.

The Director finds the proposed provision to be substantively identical to and no less effective than the counterpart Federal provision at 30 CFR 817.121(c)(4) with a few exceptions.

a. Virginia's regulation at § 480–03–19.817.121(c)(4)(i), creates a rebuttable presumption that subsidence caused damage to a protected structure if that structure is within an area that is ''determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land.'' Virginia's language is substantively identical to the federal regulation at 30 CFR 817.121(c)(4)(i). However, in a letter dated January 3, 1997 from Virginia to OSM (Administrative Record Number VA–902), Virginia stated that the ''Division will continue to measure angle of draw from the edge of high extraction mining areas, where subsidence is likely to occur (areas where 50% or more of the coal has been removed).'' This interpretation by Virginia is inconsistent with the Federal rules. The angle of draw is defined in the preamble to the 1995 Federal rules on subsidence as ''the angle of inclination between the vertical at the edge of the underground mine workings and the point of zero vertical displacement at the edge of the subsidence trough.'' 60 FR 16722, 16738 (March 31, 1995). OSM does not limit the angle of draw to high extraction areas. Thus, Virginia's interpretation could create a smaller area within which the presumption of causation would apply. Accordingly, since Virginia's language is substantively identical to the federal regulation, OSM is approving § 480–30–19.817.121(c)(4)(i) to the extent it is interpreted consistently with the plain language of 30 CFR 817.121(c)(4)(i). OSM is not approving § 480–03–19.817.121(c)(4)(i) to the extent it will be applied in a manner consistent with the plain language of the federal rule that states the angle of draw will be projected ''from the outermost boundary of any underground mine workings to the surface of the land.''

Virginia is also adding language to allow for the approval of the site-specific angle of draw. This language is substantive identical to 30 CFR 817.121(c)(4)(ii). However, as noted above Virginia is not interpreting how the angle of draw will be determined in a manner consistent with the federal rules. Therefore, OSM is approving § 480–03–19.817.121(c)(4)(ii) to the extent it is interpreted consistently with the plain language of 30 CFR 817.121(c)(4). OSM is not approving § 480–03–19.817.121(c)(4)(ii) to the extent it will be applied in a manner inconsistent with the plain language of the federal rule.

(b) At proposed at § 480–03–17.817.121(c)(4)(i), Virginia has provided for a 28-degree angle of draw rather than the 30-degree angle of draw provided in the Federal regulations at 30 CFR 817.121(c)(4)(i).

OSM approved the Federal regulations concerning angle of draw at 30 CFR 817.121(c)(4) on March 31, 1995 (60 FR 16722–16751). The preamble to the approval of 817.121(c)(4) appears on pages 16737 through 16741. That preamble presents OSM's explanation for approval of the 30-degree angle of draw and the flexibility which allows states to apply for an angle of draw other than the 30-degree angle of draw, and an explanation of how the angle of draw is implemented.

> The purpose of paragraph 30 CFR 817.121(c)(4) is to set out a procedure under which a specified area would be subject to a rebuttable presumption that subsidence from underground mining caused surface damage to non-commercial buildings or occupied residential dwellings and related structures. This evidentiary standard would simplify establishing causation of subsidence damage in many cases, by relieving the regulatory authority of the initial burden of providing evidence that damage was caused by the mine operation. [60 FR at 16737]
>
> The presumption would be established only after it is determined that damage caused by earth movement did in fact occur within the specified angle of draw. The burden of rebutting the presumption will be appropriately on the mine operator, who will have the best information as to the nature, timing, and sequence of mining activities, geological conditions, etc.; i.e., the types of facts directly related to causation of the damage. [60 FR at 16737]
>
> OSM believes that the establishment of a specific angle for the presumption is important and has a number of effects or ramifications. In any enforcement proceedings concerning allegations of subsidence damage to protected structures, it will affect the initial burdens of going forward with the evidence for both the regulatory authority and the permittee * * * [o]nce the angle of draw is established, permit applicants will be required to comply with all presubsidence survey requirements covering at least the area within the angle of draw * * * OSM believes [that] applying the presumption to a specified angle of draw will balance the various purposes of SMCRA, including both environmental protection and the SMCRA section 102(k) purpose of encouraging the full utilization of coal resources through the application of under ground extraction technologies. (60 FR at 16737–16738)

The ''angle of draw'' is the angle formed between a line drawn vertically from the edge of the underground workings upward to the surface, and a line drawn from that same point on the edge of the underground workings up to the surface through the point at the outside edge of a subsidence trough where the subsidence has diminished to zero. Therefore, ''the angle of draw is one way to define the outer boundary of subsidence displacement that may occur at the surface.'' (60 FR at 16738)

In practice (in accordance with 817.121(c)(4)), such an angle of draw is drawn upward from all points along the outermost boundary of any (all) underground mine workings. Therefore, it is presumed (rebuttable) that damage caused by earth movement to protected structures that are either directly above mine workings or within the specific angle of draw of those workings, has been caused by the permittee. The Director notes that the purpose of the use of an angle of draw is not to prevent mining or subsidence. The purpose of the use of an angle of draw is to ease the initial investigative burden on the regulatory authority in those cases where the probability is high that damage by earth movement was caused by the underground mining operations.

While recognizing regional and site-specific variability in the angle of draw, OSM decided to establish a national standard of 30 degrees. This is consistent with the outer limits determined for earth movement in most subsidence studies across the United States, particularly later studies addressing long wall mining * * *. This nationwide standard is conservative'' (most subsidence is expected to take place within this angle of draw) and ''offers reasonable protection to surface owners anticipated subsidence scenarios.'' (60 FR at 16739)

On the other hand, while the Federal standard is conservative, it was not intended to encompass 100 percent of possible subsidence damage. OSM concluded that such a standard would place an unreasonable burden on the permittee with regard to pre-subsidence survey obligations. Some causes will likely occur where earth movement has caused damage to protected structures, but those structures may be outside of

the angle of draw standard. In those cases, the State regulatory authority will not have the benefit of the presumption of causation. The regulatory authority must, nevertheless, investigate such occurrences to obtain the evidence necessary to determine whether or not such damage is caused by the permittee.

Although the Federal regulation provides that the presumption shall apply to a 30-degree angle of draw, 30 CFR 817.121(c)(4)(i) allows the States to establish a different angle of draw if the State shows in writing that the angle has a more reasonable basis than the 30-degree angle of draw, based on geotechnical analysis of the factors affecting potential surface impacts of underground coal mining operations in the State. Such an angle of draw should be the angle within which vertical displacement of the surface is reasonably expected. Further, the Federal rule ensures that the regulatory authority also has the flexibility to establish a different angle of draw on a site-specific basis, where such variation is justified by appropriate geotechnical analysis.

By letter dated January 3, 1997 (Administrative Record Number VA–902), Virginia submitted information to OSM that is intended to show that a 28-degree angle of draw has a more reasonable basis for Virginia than the 30-degree angle of draw. Virginia's justification for the proposed 28-degree angle of draw is based on a review of existing literature, information submitted by consultants on permit applications, and the use of the Surface Deformation Prediction System (SDPS) computer modeling software to predict the zero point of movement on the surface (Angle of Draw). The detailed information presented by Virginia shows Angle of Draw ranging from 16 to 21 degrees in Dickenson County, general angle of draw statement for the eastern coal fields as 21 to 26 degrees from published literature, and detailed surface subsidence measurements by coal companies over long wall mines of 7 to 15 degrees. The SDPS computer subsidence model predicts 13 to 15. The 28-degree angle of draw proposed by Virginia is well outside of any of the above data and, therefore, is the angle within which vertical displacement of the surface is reasonably expected.

The Director finds that Virginia has provided sufficient written justification based on a geotechnical analysis of the factors affecting potential surface impacts for the proposed use of a 28-degree angle of draw in accordance with 30 CFR 817.121(c)(4)(i). Therefore, the Director is approving Virginia's use of the 28-degree angle of draw so long as it is to be measured from the outermost boundary of any underground mine workings to the surface of the land. The Director notes, as discussed above, that it is possible that earth movement that causes damage to protected structures that are outside the 28-degree angle of draw standard could occur. In those cases, Virginia will not have the benefit of the presumption of causation. Virginia must, nevertheless, investigate such occurrences to obtain the evidence necessary to determine whether or not such damage is caused by the permittee.

c. New § 480–03–19.817.121(c)(5) of the Virginia rules is substantively identical to the counterpart Federal regulations except that Virginia has also added the following. Virginia provides that no additional bond is required if the permittee demonstrates that the liability insurance required under § 480–03–19.800.60 provides applicable coverage.

There is no direct Federal counterpart to the proposed language at 30 CFR 817.121(c)(5). However, the preamble to the Federal provision at 30 CFR 817.121(c)(5) (see 60 FR 16741–16742; March 31, 1995) specifically addresses the option that would be implemented by the Virginia language. In that preamble, OSM stated that under 30 CFR 800.14(c), if the liability insurance policy required under section 30 CFR 800.60 would provide coverage sufficient to fund the reclamation of subsidence damage, that insurance may be substituted for increased bond. Therefore, the Director finds that Virginia's proposed language is consistent with and no less effective than 30 CFR 817.121(c)(5).

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) SMCRA and 30 CFR 732.17(h)(11)(I), comments were solicited from various interested Federal agencies. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded (Administrative Record Number VA–888) and stated that the proposed amendments pose no conflict with MSHA regulations. The U.S. Fish and Wildlife Service (FWS) responded and stated that the FWS has reviewed the amendments and has determined that it appears unlikely that the proposed amendments will affect Federally listed critical habitat or species (Administrative Record Number VA–893).

The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) responded (Administrative Record Number VA–892) and commented on the proposed 28-degree angle of draw. NRCS stated that while tests and analyses conducted by and for the NRCS in the Appalachian coal fields have shown a 25-degree angle of draw from the edge of extraction, NRCS has usually assumed a 30-degree angle of draw for land rights and safety reasons. NRCS said that the 30-degree figure, while somewhat conservative, is widely accepted in the academic, technical and engineering communities. In response, the Director notes that in Finding 5, above, Virginia has submitted technical justification for using a 28-degree angle of draw. That is, the Virginia technical information shows that the 28-degree angle of draw has a more reasonable basis for Virginia. As noted in the finding, Virginia's justification does not guarantee (nor does the Federal standard of 30-degree angle of draw guarantee) that all subsidence damage will necessarily take place within the specified angle of draw. Rather, it is expected that the great majority of subsidence damage would occur within the specified angle of draw. It is possible that earth movement could occur that causes damage to protected structures that are outside the 28-degree angle of draw standard. In those cases, Virginia will not have the benefit of the presumption of causation. Virginia must, nevertheless, investigate such occurrences to obtain the evidence necessary to determine whether or not such damage is caused by the permittee.

Public Comments

The following comments were received in response to the announced public comment periods. A public hearing was held on September 18, 1997, and the comments below also reflect those offered at the hearing.

One commenter recommended various typographical corrections be made to the amendment. In response, the Director notes that Virginia has corrected all but one of the typographical errors that were identified by the commenter. The remaining error at § 480–03–19.784.20(b)(7), is clearly a typographical error and does not affect the meaning of 784.20(b). Therefore, as stated in the Director's finding 5, the Director finds it to be no less effective than the Federal regulation.

Several commenters stated that the proposed 28-degree angle of draw should not be approved. Some of these commenters expressed disbelief that any specific angle of draw could adequately protect the coalfield residents from damage from subsidence. One commeter said that he can't see how anyone can draw a line on a map and say on one

side of this line damage is caused by mining, but on the other side of the line damage can not be mining related. It is especially impossible, the commenter stated, to use a single measurement for any entire region or state. Another commenter stated that the current use and practical application of the angle of draw theory is totally without merit and is contrary to the way our earth is made or reacts to stress. If a specific angle of draw must be chosen, commenters recommended a 30-degree or 35-degree angle of draw. The commenter stated that the decision to use either the 28-degrees or 30-degrees angle of draw should consider the obvious, on-the-ground damages above high-extraction mines. Another commenter said that he was told by company officials that his residence is just outside the angle of draw and that he would have to prove that the damage was subsidence related.

To the extent that the comments question the concept of any angle of draw, these comments are not within the scope of this rulemaking because they question the federal rule which was approved by OSM in 1995. For a further discussion of the purpose of the angle of draw please see the federal rule at 60 FR at 16737–16738.

The Director notes that, as discussed above in Finding 5, the Federal regulations at 30 CFR 817.121(c)(4)(I), while specifying a 30-degree angle of draw, also authorize the States to amend their programs to apply the presumption to a different angle of draw. To receive approval of a different angle of draw, the regulatory authority must show in writing that the proposed angle has a more reasonable basis than the 30-degree angle of draw. Virginia has provided the required technical justification, and OSM, after reviewing the information supplied by Virginia, concluded (see Finding 5.b.) that Virginia has met the requirements of 30 CFR 817.121(c)(4)(I).

In addition, it should be understood that neither the State's 28-degree angle of draw, nor the Federal 30-degree angle of draw are intended to encompass 100 percent of the possible cases where damage to surface structures may be caused by underground mining. Rather, OSM designed the rule to apply an angle of draw within which it would be reasonable to presume that such damage is caused by the underground mining operations. The presumption, however, does not change the ultimate burden of proof in a damage determination.

The ultimate burden of persuasion that a permittee is responsible for damage to a structure still lies with the regulatory authority or OSM. ''The presumption * * * [is] established only after it is determined that damage caused by earth movement did in fact occur within the specified angle of draw.'' [60 FR at 16737] The burden of rebutting the presumption will be on the permittee. The ''[p]ermittee may provide information * * * either before an enforcement action is taken, when the regulatory authority or OSM is determining whether a violation exists * * * or after enforcement action occurs.'' [60 FR 17637]

If damage occurs to a protected surface structure that is outside the specified angle of draw, the presumption does not exist. That is, it cannot be presumed that the permittee caused the damage. Instead, the regulatory authority must gather and evaluate evidence that the damage is caused by the permittee. The permittee, of course, may submit evidence in an attempt to refute the evidence submitted by the regulatory authority. The Director notes that neither the use of the 30-degree angle of draw or the use of an alternative, approved angle of draw (such as 28 degrees) is intended to diminish the protection afforded to non-commercial buildings, and occupied residential dwellings and structures related thereto, under 30 CFR 817.121.

One commenter stated that landowners have no chance to prove anything when they can't get cooperation from coal company officials in even looking at maps to determine when and where mining under and around their property occurred. In response, the Director notes that it is the responsibility of the State to investigate subsidence damage complaints. Mine maps are available in the permit files that should provide enough information for the State to determine if mining is being conducted under a specific property. These maps are available for public inspection under § 480–03–19.773.13(a)(2). The permittees are required under § 480–03–19.817.122 to provide six-months advance notice to property owners of proposed mining under their property.

One commenter stated that the mining maps are not reliable enough to use the angle of draw on the inside part of a mining operation. The commenter pointed to the difficulty of rescuing trapped miners by using mine maps to locate their position and drill rescue shafts to reach them. How can you, the commenter asked, use an angle of draw determined from mine maps to consider damage to people's houses, when mining companies can't even hit a simple opening to rescue trapped miners? Because of this inaccuracy, the angle of draw should be done away with. The Director notes that this comment questions the concept of any angle of draw and, therefore, is not within the scope of this rulemaking because it questions the federal rule which was approved by OSM in 1995.

A commenter provided the following comments on Virginia's January 3, 1997, technical justification of the proposed 28-degree angle of draw. The commenter objected to the use of statistics, estimates, averages, and computer modeling for ''angle of draw calculations.'' In response, the Director notes that while some of these types of mathematical procedures were used in support of the reduction from 30 to 28 degrees, the basis for the models and estimates were actual, on-the-ground measurements of the extent of subsidence impacts from underground mining. These measurements were obtained in Virginia by scientifically-documented studies of Virginia Polytechnic Institute & State University (VPI), and the mining companies.

A commenter contended that the geologic data upon which the angle of draw is based, is unsubstantiated by adequate geological information on rock types and strength. In response, the Director notes as part of Virginia's justification of the use of a 28-degree angle of draw, the State included the results of subsidence models generated by the computer software Surface Deformation Prediction System (SDPS). This computer software, which was developed by VPI in cooperation with OSM, has been validated from actual mine subsidence data in Virginia. The software allows the prediction of the angle of draw, predicated on the amount of ''hardrock'' in the overburden above an underground mine. Overburden and other data from two Virginia mines were applied to SDPS. Hardrock for these two models consisted of 69.5 and 76.7 percent based on actual core samples, and the angle of draw predicted by SDPS equated to 15.1 and 13.8 degrees. The stratigraphy in southwestern Virginia is noted for massive sandstones and other types of hardrock above the coal. The hardrock is estimated to average 50 percent of coal overburden. When a 50 percent hardrock figure is applied to SDPS, the angle of draw equates to 23 degrees. Using a conservative figure of 30 percent hardrock (atypically low for southwestern Virginia), SDPS predicts the angle of draw of 28 degrees. Thus, under the typical conditions of southwestern Virginia, OSM believes a 28-degree angle of draw for the purposes of defining the limits of rebuttable presumption is reasonable, and renders the regulations proposed by Virginia no

less effective than the counterpart provision at 30 CFR 817.121(c)(4)(I).

A commenter was concerned that the studies preferred to in support of the 28-degree angle of draw were conducted on the initial mining panels or pillar extraction when only a minimal amount of ground disruption would occur. The commenter argued that, in reality, as mining progresses, damages become more substantial because more of the overburden's strength is weakened causing even greater area of impact. In response, the Director disagrees with the commenter for two reasons. First, there is no scientific support for the commenter's hypothesis that the angle of draw increases as multiple longwall panels are mined or when full extraction room-and-pillar mining extends beyond what has been shown to be a critical width. Secondly, the State cited numerous studies by several different authors in its justification of the use of a 28-degree angle of draw. There is no support for the commenter's allegation that all or any of these studies were conducted only during the initial mining of panels or pillars. Several of the supporting documents show that the studies were conducted using multipanel longwall mines or areas of extensive room-and-pillar mining.

Several commenters referred to the McClure #1 mine in Virginia and said that subsidence damage was not confined to a 28 degree angle of draw. One commenter added that the proportion of sandstone in the overburden above the McClure #1 mine is less than expected by the modeling. In response, the Director notes that Virginia's submittal to support their request for a 28-degree angle of draw specifically cites information that concerns the McClure #1 mine (Administrative Record Number VA 902). In that reference, the Clinchfield Coal Company (permit 1400411, revision 9402858) completed a study in 1989 of actual subsidence (not modeling data) over the McClure # mine in the Jawbone seam. Clinchfield's survey data measured a draw angle of 15 degrees. In its permit, however, Clinchfield requested a more conservative 24 degree angle of draw for the longwall mining. Both of these angles are well within the 28-degree angle of draw requested by Virginia. That is, the subsidence trough at the McClure #1 mine (subsidence trough is the zone of vertical displacement as measured by a vertical line at the edge of the underground workings and the point where the vertical displacement diminishes to zero) was measured to be well within the proposed 28-degree angle of draw. Therefore, the Director continues to believe that the proposed 28-degree angle of draw is reasonable.

As for allegations of damage outside of a 28-degree angle of draw, such allegations do not automatically discredit the reasonableness of the proposed angle of draw. As explained in Finding 5 above, the angle of draw (whether it be the Federal 30-degrees or the proposed 28 degrees) is not intended to encompass 100 percent of all subsidence damage. Rather, the angle of draw is intended to encompass an area within which it is reasonable to presume that subsidence damage is caused by the underground mining operations. Based on the actual measurements of vertical displacement above the McClure 11 mine as cited in the Clinchfield Coal Company study (15 degrees), it is reasonable to believe that most subsidence damage would be confined within the proposed angle of draw. Therefore, the Director continues to believe that the use of a 28-degree angle of draw is reasonable and no less effective than the Federal 30-degree angle of draw.

Several commenters expressed concern over how and where the line that represents the angle of draw is determined and drawn. One commenter stated that the angle should be computed from the outermost boundary of any underground mine workings. The commenter stressed the use of the word ''any'' as it refers to underground mine workings. The commenter acknowledged that the ''any'' requirement is in the Virginia regulations at § 480–03–19.817.121(c)(4), but explained that the angle should be computed to include the entire mine, the adjacent area, the affected area, the cumulative impact area, and the disturbed area. One commenter requested that OSM clarify where the angle of draw is measured from. Another commenter insists the measure of the angle of draw be outward from the perimeter of the underground mine, and suggests that Virginia's intent is to only measure outward from high-extraction mining areas. These comments pertain to Virginia's regulation at 480–03–19.817.121(c)(4)(I), which is discussed in the Director's Finding 5.a. As previously stated, the definition of ''angle of draw'' is defined as ''the angle of inclination between the vertical at the edge of the underground mine workings and the point of zero vertical displacement at the endge of the subsidence trough.'' 60 FR 16722, 16738 (March 31, 1995). The Director agrees with the commenter that Virginia's interpretation is to only measure the angle of draw from the high extraction mining areas which is inconsistent with the plain language of 30 CFR 817.121(c)(4)(I). Accordingly, Virginia's regulation is not approved to the extent it will be applied in a manner inconsistent with the plain language of the federal rule.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(H)(11)(I), OSM solicited comments on the proposed amendment from EPA. EPA responded on July 22, 1996 (Administrative Record No. VA–895) and stated that the amendment is in compliance with the Clean Water Act and offered no additional comments.

V. Director's Decision

Based on the findings above, and except as noted below, the Director is approving Virignia's amendment concerning subsidence damage as submitted by Virginia on May 21, 1996, and clarified by letter dated January 3, 1997, and revised by a letter dated March 20, 1997, to correct minor punctuation and typographical errors. The Director is not approving § 480–03–19.817.121(c)(4)(I) to (ii) to the extent it will be applied in a manner inconsistent with 30 CFR 817.121(c)(4). The Director is approving § 480–03–19.817.121(a)(2)(iii) to the extent it applies to longwall mining.

The Federal regulations at 30 CFR part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes

to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to State programs. In his oversight of the Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Virginia of only such provisions.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and Whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 29, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

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

2. Section 946.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	*	* *
May 21, 1996	September 17, 1997.	VA Code §§ 480–03–19.700.5; 784.14, .20; 817.41, .121.

[FR Doc. 97–24682 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–97–035]

RIN 2115–AE46

Special Local Regulations; Fleur De Lis Regatta Ohio River Mile 602.0–604.0, Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Fleur De Lis Regatta. This event will be held on September 27 & 28, 1997 from 9 a.m. until 3 p.m. at Louisville, Kentucky. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These temporary regulations are effective from 9 a.m. until 3 p.m., on September 27 & 28, 1997.

FOR FURTHER INFORMATION CONTACT: LT Jeffrey W. Johnson, Chief, Port Operations Department, USCG Marine Safety Office, Louisville, Kentucky at (502) 582–5194, ext. 39.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a sailing regatta. The event is sponsored by the City of Louisville Board of Alderman. The regatta is a series of recreational sailing vessel races. Commercial vessels will be permitted to transit the area every three hours.

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 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 because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

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

Federalism Assessment

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

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e(34)(h) of Commandant Instruction M16475.1B, (as revised by 61 FR 13563; March 27, 1996) this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T08–035 is added to read as follows:

§ 100.35–T08–035 Ohio River at Louisville, Kentucky

(a) *Regulated Area:* Ohio River Mile 602.0–604.0.

(b) *Special Local Regulation:* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. ''Participants'' are those persons and/or vessels identified by the sponsor as taking part in the event. The ''official patrol'' consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessel assigned to patrol the event. The Coast Guard ''Patrol Commander'' is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, Coast Guard Marine Safety Office, Louisville.

(1) No vessel shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call sign ''PATCOM''.

(c) *Effective Date:* These regulations will be effective from 9 a.m. to 3 p.m. on September 27 and 28, 1997.

Dated: September 3, 1997.

Paul J. Prokop,

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

[FR Doc. 97–24595 Filed 9–16–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–97–097]

RIN 2115–AE46

Special Local Regulation: Fireworks Displays Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document provides notice of the dates and times of the special local regulations contained in 33 CFR 100.114, Fireworks Displays within the First Coast Guard District. All vessels will be restricted from entering the area of navigable water within a 500 yard radius of the fireworks launch platform for each event listed in the table below. Implementation of these regulations is necessary to control vessel traffic within the regulated area to ensure the safety of spectators.

EFFECTIVE DATE: The regulations in 33 CFR 100.114 are effective from one hour before the scheduled start of the event until thirty minutes after the last firework is exploded for each event listed in the table below. The events are listed in the table below. The events are listed chronologically by month with their corresponding number listed in the special local regulation, 33 CFR 100.114.

ADDRESSES: Comments should be mailed to Commander (osr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 734 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William H. Rypka, Office of Search and Rescue branch, First Coast Guard District at (617) 223–8460.

SUPPLEMENTARY INFORMATION: This notice implements the special local regulations in 33 CFR 100.114 (62 FR 30988; June 6, 1997). All vessels are prohibited from entering a 500 yard radius of navigable water surrounding the launch platform used in each fireworks display listed below.

Table 1—Fireworks Displays

September

1. Grand Fiesta Italiana

Date: September 6, 1997
Time: 9:00 p.m. to 10:30 p.m.
Location: Bar Beach, Hempstead Harbor, Hempstead, NY
Lat: 40°49′52″N, *Long*: 073°39′10″W (NAD 1983)

2. Taste of Italy

Date: September 6, 1997
Rain date: September 7, 1997
Time: 8:00 p.m. to 10:30 p.m.
Location: Norwich Harbor, off Norwich Marina, Norwich, CT
Lat: 41–31–20N, *Long:* 072–06–48W (NAD 1983)

8. Renesselaer Festival

Date: September 20, 1957
Time: 8:45 p.m. to 10:15 p.m.
Location: Hudson River, below Dunn Memorial Bridge, Rensselaer, NY
Lat: 42°38′23″N, *Long:* 073°45′0″W (NAD 1983)

9. Deepavali Festival

Date: October 5, 1997
Time: 6:45 p.m. to 8:15 p.m.
Location: East River, below the Brooklyn Bridge, Manhattan, NY
Lat: 40°43′10″N, *Long:* 074°0′0″W (NAD 1983)

Dated: August 29, 1997.

R. M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 97–24601 Filed 9–16–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–97–034]

RIN 2115–AE46

Special Local Regulations; Ducks on the Ohio; Ohio River Mile 792.0–793.0, Evansville, Indiana

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Ducks on the Ohio. This event will be held on September 13, 1997 from 1 p.m. until 4 p.m. at Evansville, Indiana. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These temporary regulations are effective from 1 p.m. until 4 p.m., on September 13, 1997.

FOR FURTHER INFORMATION CONTACT: LT Jeffrey W. Johnson, Chief, Port Operations Department, USCG Marine Safety Office, Louisville, Kentucky at (502) 582–5194, ext. 39.

SUPPLEMENTARY INFORMATION

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a charity fund raising event involving a race of non-toxic vinyl plastisol ducks. The navigational channel will be used for the duration of the race. The event is sponsored by Evansville Goodwill Industries, Inc.

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 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 because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

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

Federalism Assessment

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

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2e(34)(h) of Commandant Instruction M16475.1B, (as revised by 61 FR 13563; March 27, 1996) this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T08–034 is added to read as follows:

§ 100.35–T08–034 Ohio River at Evansville, Indiana

(a) *Regulated Area:* Ohio River Mile 792.0—793.0.

(b) *Special Local Regulation:* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. ''Participants'' are those persons and/or vessels identified by the sponsor as taking part in the event. The ''official patrol'' consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessel assigned to patrol the event. The Coast Guard ''Patrol Commander'' is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, Coast Guard Marine Safety Office Louisville.

(1) No vessel shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol commander is empowered to forbid and control the

movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call sign ''PATCOM''.

(c) *Effective Date:* These regulations will be effective from 1 p.m. to 4 p.m. on September 13, 1997.

Dated: September 3, 1997.

Paul J. Prokop,

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

[FR Doc. 97–24594 Filed 9–16–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–97–069]

RIN 2115–AE46

Special Local Regulations for Marine Events; Chesapeake Airshow, Frog Mortar Creek, Essex, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Chesapeake Airshow to be held over Frog Mortar Creek, Essex, Maryland. These special local regulations are necessary to provide for the safety of life and property on U.S. navigable waters during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: This temporary regulation is effective from 10 a.m. to 5:30 p.m. EDT (Eastern Daylight Time) on September 13 and September 14, 1997.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore Maryland, 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The request to hold the event was not received until August 18, 1997. Publishing a notice of proposed rulemaking and delaying its effective date would be contrary to safety interests, since immediate action is needed to protect vessel traffic from the potential hazards associated with the airshow.

Discussion of Regulations

On September 13 and 14, 1997, the Essex-Middle River Chamber of Commerce will sponsor the Chesapeake Airshow. The event will consist of 15 aircraft flying at low altitudes in various formations over Frog Mortar Creek. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event.

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 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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory procedures of DOT is unnecessary. Entry into the regulated area will only be prohibited while the aircraft are actually performing. Since vessels will be allowed to transit the event area between performances, the impacts on routine navigation are expected to be minimal.

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'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities, because the regulations will only be in effect for a short duration in a limited area.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.b.2.e(34)(h) of Commandant Instruction M16475.1b (as amended, 61 FR 13564; March 27, 1996), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[Amended]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary Section 100.35T–05–069 is added to read as follows:

§ 100.35T–05–069 Frog Mortar Creek, Essex, Maryland

(a) *Definitions:*

(1) *Regulated area:* The waters of Frog Mortar Creek enclosed by:

Latitude	*Longitude*
39°19′54.0″ North	76°24′36.0″ West
39°19′48.0″ North	76°24′36.0″ West
39°19′24.0″ North	76°24′00.0″ West
39°19′18.0″ North	76°24′12.0″ West

All coordinates reference Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective dates:* This regulation is effective from 10 a.m. to 5:30 p.m. EDT on September 13 and 14, 1997.

Dated: September 2, 1997.

Roger T. Rufe, Jr.,

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

[FR Doc. 97–24593 Filed 9–16–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 79–116]

RIN 2115–AA03

Qualifications for Tankermen and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Final rule; Extension of a delayed compliance date, request for comments.

SUMMARY: The Coast Guard establishes an extended delay of the date for compliance and invites further public comments on the appropriate qualifications for a person in charge of the transfer of fuel oil as treated in the final rule regulating Qualifications for Tankermen and for Persons in Charge (PICs) of Transfers of Dangerous Liquids and Liquefied Gases, published on May 8, 1997 (62 FR 25115). The delay and additional opportunity for comment are necessary because much of the maritime industry, especially the inland towing segment, has expressed concern that it was not aware of the rule, or was confused about the section that governs fueling. The delay and opportunity for comment will ensure that the Coast Guard fully considers all viewpoints.

EFFECTIVE DATE: The effective date of the final rule published in the Federal Register on May 8, 1997 (62 FR 25115) remains June 9, 1997.

Compliance Dates: The compliance date for the revisions to 33 CFR 155.710(e) introductory text, (e)(1), (e)(2) and (e)(3) is July 1, 1998. Furthermore, the compliance date for 33 CFR 155.710(e)(4), not revised in the final rule, is July 1, 1998.

Comments: Comments must be received by November 17, 1997.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 79–116], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the above address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 800–842–8740, extension 7–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Mark C. Gould, Project Manager, Maritime Personnel Qualifications Division. The telephone number is 800–842–8740, extension 7–6890.

SUPPLEMENTARY INFORMATION:

Delay of Date for Compliance

The Coast Guard establishes a further delay of date for compliance with §§ 155.710(e), (e)(1), (e)(2), (e)(3), and (e)(4); The new date is July 1, 1998. The delay for compliance will allow the Coast Guard ample time to evaluate comments received in response to this notice.

Request for Comments

The Coast Guard encourages interested persons to offer comments on the issues set forth in this delay of date for compliance and request for comments. Persons submitting comments should include their names and addresses, identify the docket [CGD 79–116], and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ x 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Background and Purpose

On April 4, 1995, the Coast Guard published an interim rule regulating Qualifications for Tankermen and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases [60 FR 17134]. On May 8, 1997, the Coast Guard published a final rule revising, among other things, the language of 33 CFR 155.710(e) [62 FR 25115]. The final rule did not change the requirements for fueling in 33 CFR 155.710(e), (e)(1), (e)(2), (e)(3), or (e)(4) from those in the interim rule, but it clarified the applicability of the section and made clear that the regulation covered more of the public than the public had thought. Many members of the maritime industry asked the Coast Guard to delay the date of compliance and to allow the opportunity for additional comments on § 155.710(e).

The language of the interim rule had led many operators of inland towboats to assume that they could comply with *either* paragraph 155.710(e)(1) or (2). Paragraph (1) requires that the PIC on an inspected or uninspected vessel, required by 46 U.S.C. 8904(a) to have a licensed person aboard, hold a license that authorizes service on that vessel as master, mate, pilot, engineer, or operator, or hold a valid MMD endorsed as Tankerman-PIC or Tankerman-PIC (Barge), appropriate to the fuel oil and vessel. Paragraph (2) requires that, aboard each uninspected vessel of 100 or more gross tons, the PIC of the transfer of fuel oil be instructed both in his or her duties and in the Federal statutes and regulations on water pollution that apply to the vessel. But, as the final rule made plain, paragraph (2) covers only uninspected vessels of 100 or more gross tons *not already covered by paragraph (1).* And, since each uninspected towing vessel (UTV) of more than 26 feet in length must carry aboard a person licensed to operate that type of vessel under 46 U.S.C. 8904, each of those UTVs must comply with paragraph (1).

After the Coast Guard published the final rule, it learned that from 2,500 to 3,000 mariners will need to obtain the licenses or merchant mariners' documents (MMDs) under paragraphs 155.710(e)(1). To obtain these credentials takes both professional experience and formal training. It will also take more training facilities than are now available. For this reason, on July 11, 1997, the Coast Guard published a notice [62 FR 37134] delaying the date for compliance with § 155.710(e), in its entirety, until January 1, 1998.

An important change in the final rule affected § 155.710(e). The PIC may now hold a merchant mariner's document (MMD) instead of a license. But the MMD must be endorsed as either (1) restricted Tankerman-PIC (as described in the final rule under § 13.111(b)); (2) Tankerman-PIC (as described in the final rule under § 13.201); or, for barges only, (3) Tankerman-PIC (Barge) (as described in the final rule under § 13.301). As the Coast Guard stressed in the final rule, it always intended for § 155.710(e)(1) to apply to UTVs.

Allowing a second person to serve as PIC was appropriate to alleviate the burden on the operator of an uninspected towing vessel (OUTV) during transfers of fuel under way, when the operator's attention and presence are necessary in the wheelhouses to ensure the safe navigation of their vessels. Most UTVs carry just one or two OUTVs. While one is navigating the vessel, the other must be getting his or her mandatory rest

before assuming the watch as OUTV; so neither is generally available for transfers. The usual practice has been for an unlicensed and undocumented person to act as the actual PIC, although the OUTV remains the Legal PIC. Currently, it is not uncommon for an unlicensed and undocumented person to act as the actual PIC, although the OUTV remains the legal PIC. Under paragraph 155.710(e)(1) of the final rule, it may become necessary for a UTV to carry aboard either another licensed person or an unlicensed person with an MMD endorsed as Tankerman-PIC or restricted Tankerman-PIC. The Coast Guard has determined that requiring licensing or documentation for the person in charge of a fueling operation is good marine practice. The fuel transfer process should be such that either the documented person on the fuel flat, or the individual ''in charge'' of the fuel transfer on the towing vessel, should be knowledgeable enough, and have the authority, to shut down the transfer in the event of a problem. Each should be appropriately qualified to handle their responsibilities, and accountable for any mistakes that they might make.

Beyond any public comments addressing 33 CFR 155.710(e) in general, the Coast Guard also seeks comments on the following issues:

(1) Somebody aboard each UTV must be accountable for the safe completion of every transfer of fuel. Who should be legally responsible for it—an OUTV? Another licensed or documented person? Or an unlicensed and undocumented person? If the last of these, what recourse would the Coast Guard have against that person if a spill occurred during a transfer in which he or she was the legal PIC?

(2) Should the PIC of a transfer of fuel aboard the UTV have to hold either (a) a license; or (b) an MMD endorsed for Tankerman-PIC, restricted Tankerman-PIC, or Tankerman-PIC (Barge)?

(3) What kind of formal training should an applicant have to prove to hold an MMD endorsed in any of these three ways?

Dated: September 4, 1997.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–24592 Filed 9–16–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 155 and 156

[CGD 90–071a]

RIN 2115–AD87

Overfill Devices

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing minimum standards for overfill devices as required by the Oil Pollution Act of 1990 (OPA 90). The purpose of the overfill device is to warn of cargo tank overfills. This regulation requires the phased-in installation and use of the devices on the cargo tanks of certain tank vessels that carry oil or oil residue as primary cargo. This regulation should reduce the likelihood of spills when oil is loaded as cargo.

DATES: This final rule is effective on October 17, 1997.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LTJG J.K. Grzelak, Project Manager, Office of Standards Evaluation and Development (G–MSR), telephone (202) 267–1249.

SUPPLEMENTARY INFORMATION:

Regulatory History

Section 4110 of the Oil Pollution Act of 1990 (OPA 90) [Pub. L. 101–380) adds a statutory note following 46 U.S.C. 3703 requiring, in part, the establishment of minimum standards for overfill devices on certain tank vessels.

To meet the statutory requirements, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, ''Overfill Devices,'' in the **Federal Register** (58 FR 4040; January 12, 1993). The Coast Guard received 32 letters commenting on the proposal.

In response to some comments, the Coast Guard published a notice (58 FR 54315; October 21, 1993) and held a public meeting at U.S. Coast Guard Headquarters in Washington, DC, on November 17, 1993. Twenty-eight people attended the meeting. A list of the attendees and audio tapes of the meeting are available in the public docket for this rulemaking [CGD 90–071a] at the address listed under **ADDRESSES**.

On October 21, 1994, the Coast Guard published an interim rule entitled, ''Overfill Devices'' in the **Federal Register** (59 FR 53286). On January 19, 1995, the interim rule went into effect and the comment period closed. The Coast Guard received 7 letters commenting on the interim rule. No additional public meeting was requested and none was held.

Background and Purpose

An overfill spill occurs when too much oil is pumped or gravitated into a cargo tank during a transfer operation (e.g., from a facility to a tank vessel or from one tank vessel to another). Human error is the most often reported cause of this type of spill. Many overfill spills are small; however, some reported overfill spills have involved large quantities of oil.

Coast Guard regulations require vessel owners and operators to follow pollution prevention procedures during oil transfer operations (33 CFR parts 155 and 156). Existing regulations did knot require devices on cargo tanks to detect and warn of impending overfills until January 19, 1995, when the interim rule for overfill devices went into effect.

More detailed background information on overfill spills and devices can be found in the preamble of the NPRM under Background and Purpose.

Discussion of Comments and Changes

Seven letters were received in response to the interim rule. The Coast Guard has reviewed all of the comments and they are discussed as follows:

Applicability

One comment, writing on behalf of 7 agricultural associations, strongly supported the Coast Guard's interim rule as it applies to animal fats and vegetable oils. This final rule continues to exclude tank vessels carrying animal fats and vegetable oils from overfill device requirements. To make this exclusion clear, paragraph (f) of 33 CFR 155.480 has been revised in this final rule.

One comment expressed opposition to the requirements for overfill devices on black oil barges, specifically those that carry Number 6 oil, because they carry that oil only for a few months out of the year and the heat required to keep the product liquefied renders the equipment useless. The Coast Guard finds that heavy oils are just as likely to overflow from cargo tanks as lower viscosity oils, regardless of the time of year. Vessel

owners and operators must choose overfill devices best suited for the oil they carry, and in accordance with 33 CFR 155.750(e)(2), 46 CFR 39.20–7(b)(3), and 46 CFR 39.20–9(b)(3), they must test their equipment prior to each cargo loading. If a method of overfill detection is not technologically available for a particular type of high-temperature service oil, such as Number 6 oil, the owner or operator of a vessel, on a case-by-case basis, may request an alternative means of compliance in accordance with 33 CFR 155.120(c).

Two comments stated that the rule should apply to all tank vessels, regardless of cargo capacity, because smaller vessels operate almost exclusively in confined waterways with longer flushing periods, higher environmental sensitivities, and restricted cleanup access. A similar comment stated that the implementation costs of higher standards are cost-effective when compared with the probable costs of spill response, cleanup, and liability for damages for tank vessels less than 1,000 cubic meters (M^3). The Coast Guard has reviewed the costs of this rule, especially with respect to small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and has determined that it is appropriate to limit the applicability to vessels with a cargo capacity of 1,000 M^3 (approximately 6,290 barrels, 1 barrel equals 42 U.S. gallons) or more to balance the benefits of this rulemaking with the costs. Therefore, this final rule does not change the applicability of overfill device requirements to include tank vessels less than 1,000 M^3.

One comment objected to the exemption of vessels that were likely to be phased out of service in the next 5 years. The Coast Guard disagrees with this comment because the costs of upgrading overfill devices on these vessels would not be recovered by the year 2000. In addition, the Coast Guard has determined that the costs incurred by these vessels would outweigh the environmental clean-up costs should an overfill occur. For these reasons, this final rule retains the exemption for single-hull vessels that will be phased out by the year 2000.

Two comments suggested that the regulation should apply during all cargo transfer operations, not just loading. As stated in the interim rule, overfill incidents occur during internal cargo transfers and discharges; however, these incidents are infrequent and do not result in large spills into the water. Tank vessel owners and operators are still encouraged to use overfill devices for all transfer operations, but this final rule continues to apply only during loading.

One comment suggested clarification of the application of this rule to foreign-flag tank vessels because it questioned the procedure for determining the compliance date under 33 CFR 155.480(d) if the cargo tank internal examinations were conducted on a rolling basis, rather than all at once. To avoid the duplication of costly gas-freeing of cargo tanks, the Coast Guard allowed for installation of overfill devices as tanks are due for internal examinations in the interim rule. This provision has not changed in this final rule.

One comment wanted to know the meaning of the term ''newly constructed tank vessel'' and wanted clarification on what requirements would apply to this type of vessel. The interim rule used the phrase ''newly constructed tank vessel'' to reference vessels built after January 19, 1995. This reference is not necessary because after January 19, 1995, tank vessels affected by the rule had to meet the requirements of 33 CFR 155.480 regardless of their build date. Therefore, the Coast Guard has determined that the clause referencing newly constructed tank vessel requirements at the end of paragraph (b) of 33 CFR 155.480 in the interim rule is redundant and it has been removed.

In addition, the Coast Guard noted that applying the overfill device requirements to foreign-flag tank vessels in the EEZ is not consistent with the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The Convention sets forth the generally recognized principles of international law concerning the establishment of laws and regulations by a coastal state in its EEZ to prevent, reduce, and control pollution from vessels. Article 211(5) of UNCLOS specifies that such laws and regulations by a coastal state in its EEZ are authorized if they give effect to accepted international rules and standards established through the competent international organization or general diplomatic conference. For consistency, the Coast Guard has eliminated the reference to the EEZ in § 155.480(b) and revised § 155.100 to clarify that overfill devices will be required on U.S.- and foreign-flag tank vessels, with a cargo capacity of 1,000 or more cubic meters, loading oil or oil residue as cargo and operating in the navigable waters of the United States, or at a port or terminal under the jurisdiction of the United States.

Minimum Standards for Overfill Devices on Tankers

Two comments stated that the systems which automatically shutdown the transfer pumps before an overfill occurs should be required on all tank vessels. The vapor control regulations in 46 CFR part 39 authorize the use of automatic shutdown systems during barge loading and lightering operations. The Coast Guard allows the use of this system aboard barges to be consistent with related regulations and standards. However, this final rule does not make this alternative a requirement for all vessels because it is not cost beneficial to maritime operators already using other systems.

Minimum Standards for Overfill Devices on Barges

One comment discussed the 5-year monitoring period for the effectiveness of high-level indicating devices, such as stick gauges. As stated in the interim rule, if at the end of the 5-year period, the Coast Guard determines that the overfill spill record of tank barges equipped with these devices is not essentially as good or better than the overfill spill record of other tank vessels covered by the regulations, then the Coast Guard may remove the provision in the regulation allowing the use of high-level indicating devices as substitutes for overfill alarms. One comment argued that an agency should not change a previously allowed regulatory alternative unless there is compelling evidence to support such a change. In addition, the comment stated that it is particularly unfair to make such a change after the affected industry has invested in new equipment, expecting that its use will be permitted.

The Coast Guard reviewed the spill data from tank vessels for the years 1989 through 1991, and collected further spill data for tank vessels for the years 1992 through June 1996. The interim rule, which required overfill devices for tank vessels, was effective on January 19, 1995. Since then, the percentage of oil spills due to overfills from tank barges has been significantly reduced. In the years 1992 through 1994, tankers averaged approximately 1.7 overfills per month and tank barges averaged 3.3 overfills per month.

After the requirement for overfill devices was implemented, the average number of overfills for tankers was 0.4 per month and the average number for tank barges was 1.1 per month. This is a 76 percent decrease in the total number of overfills for tankers and a 66 percent decrease for tank barges. Based on these calculations, the Coast Guard

has determined that the 5-year monitoring period is no longer necessary because statistics indicate that overfill devices, as required in the interim rule, are effective. The provision in the regulation for the use of high-level indicating devices, as an alternative to overfill alarms, will be retained in this final rule. The stick gauge alternative for tank barges will also be retained in this final rule because the Coast Guard has determined that it is cost effective.

Training

On comment stated that the Coast Guard should proceed quickly with publishing an interim rule regarding tankerman qualifications and training standards. A similar comment stated that manning and training standards for smaller vessels are insufficient. The Coast Guard recognizes that the majority of overfills are due to human error and is currently developing a final rule entitled, ''Qualifications for Tankermen and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases.'' An interim rule for the project was published in the **Federal Register** on April 4, 1995 (60 FR 17134), and was effective on March 31, 1996.

Another related comment stated that the Coast Guard should require the monitoring of transfer operations because they are of critical importance, regardless of the type of overfill device in use. The person in charge of transfer procedures is already required by 33 CFR 155.750(e)(1) (i) and (ii) to monitor the level of cargo in the tank, and shut down transfer operations in time to ensure that the cargo level in each tank does not exceed the maximum amount permitted by 33 CFR 155.775(b).

Maximum Cargo Level of Oil

One comment recommended that the Coast Guard change the level of cargo allowed in the cargo tank to 95 percent. The rule will continue to establish a 98.5 percent level as the maximum level of fill because it is consistent with the regulations for vapor control systems in 46 CFR 39.30–1(e). Accordingly, a tank may not be filled higher than 98.5 percent or the level at which the overfill alarms are set, for those cases where shutdown must be initiated at a level below 98.5 percent to ensure that an overfill does not occur.

Other Issues

One comment questioned the need for additional overpressurization protection for a tank barge outfitted only with a closed loading system. The comment also requested clarification of the adequacy of high-level indicating devices as a means of satisfying the liquid overpressurization requirements of 46 CFR part 39. Overpressurization requirements for closed loading systems that do not use vapor control are outside the scope of this rule, but the Coast Guard may address it separately in a future rulemaking project.

Two comments suggested rewording 33 CFR 155.480 so that it is not misinterpreted as requiring an independent overfill system on each cargo tank of a tankship or misinterpreted as requiring an audible and visible alarm at each tank top. The Coast Guard has retained these paragraphs as written in the interim rule because the original wording clearly recognizes tank overfill systems, with centralized control and alarm functions, without excluding independent devices as means of satisfying the requirements of this rule.

One comment requested a grandfather provision for those vessels who had overfill devices installed before the effective date of this rulemaking. The Coast Guard based the requirements for overfill devices on the overfill protection requirements in 46 CFR part 39. The Coast Guard has determined that the vessels which complied with those rules would not need to have their overfill device arrangements grandfathered. For vessels not subject to 46 CFR part 39, the Coast Guard allowed for equivalent alternatives to specifically assist those owners or operators who installed devices prior to January 19, 1995. In addition, alternative arrangements are permitted under this rule, therefore, the Coast Guard has not included a grandfather clause in this final rule.

One comment suggested that the overfill device requirements in 33 CFR 155.480 be rewritten to stand alone, instead of cross referencing 46 CFR part 39. The intent of this rulemaking is to conform overfill device requirements to the requirements for overfill prevention of vessels using vapor control systems. Because the Coast Guard wishes to ensure these two parts conform, this final rule does not change the cross-reference contained in 33 CFR 155.480.

One comment stated that 33 CFR 155.480(b)(2)(l) fails to recognize the inherent simplicity of the river barge as compared to the ocean tanker. The comment suggested a battery powered system with a light indicating that the system has power, as another alternative for barges. Again, these recommended changes to 33 CFR 155.480(b)(2)(i) are not consistent with the vapor control rules. The Coast Guard chose to conform these rules with the existing marine vapor control rules to assist those who must comply with them.

One comment requested that a summary shutdown, that does not indicate which tank is overfilling, be accepted in lieu of a shutdown that does indicate which tank is overfilling. As written, the interim rule and this final rule allow a summary shutdown arrangement.

Assessment

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). Although it does not require an assessment of costs and benefits under section 6(a)(3) of Executive Order 12866, an assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. There were no comments received regarding the interim assessment. In addition, the change to 33 CFR 155.480 in no way changes the findings of the interim assessment. For these two reasons, and in that there is so little change in this final rule form the interim rule, the interim assessment is adopted as a final assessment under Executive Order 12866.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard received no comments on the interim rule from small entities. Sufficient flexibility alternatives were built into this rulemaking to accommodate small entities. Therefore, 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 economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and

participate in the rulemaking process. The NPRM for this rulemaking specifically asked small entities to comment if they thought this rulemaking would have a significant economic impact on their business. In addition, the Coast Guard held a public meeting at U.S. Coast Guard Headquarters on November 17, 1993, to hear public comment on the rulemaking. Based on the comments received on the NPRM, the Coast Guard revised the regulations to lessen the burden on small entities. For example, the Coast Guard has limited these regulations to tank vessels with a cargo carrying capacity of more than 1,000 M^3 to accommodate those small entities that do not pose as large an environmental threat, yet would incur substantial cost if overfill devices were required. Even with the restricted application, this final rule covers 21 tankships and 391 tank barges which are owned and operated by small companies. The Coast Guard has provided further flexibility for the affected small entities by permitting the alternative of high-level indicating devices for tank barges. This is a less expensive option and is less costly for the smaller entities contained within the tank barge industry. If you are a small entity affected by this final rule and need further help determining how this rule applies to you, please contact the Coast Guard Officer in Charge of Marine Inspection identified in 33 CFR part 3 that is nearest to your vessel's operation.

Collection of Information

This final rule provides for collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by 5 U.S.C. 3507(d), the Coast Guard has submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection. Section number 155.750 is approved under OMB control #2115–0121 which expires February 28, 2000. Section 156.150 was approved by OMB under OMB 2115–0506 and is currently under their review for renewal.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. One comment requested that State and municipalities be allowed to adopt stricter requirements than these Federal regulations. The Coast Guard has determined that the standards for overfill devices in this final rule are vessel design requirements and therefore, preclude States or municipalities from adopting requirements for tank vessels operating in interstate or foreign commerce, that differ from those contained in this rule.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**. The Environmental Assessment discusses the action, subsequent expected environmental impacts, and the overall need for the action. These regulations are not expected to result in a significant impact on the quality of the human environment because overfills tend to result in relatively small spills.

List of Subjects

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set forth in the preamble, the interim rule amending 33 CFR parts 155 and 156, which was published in 59 FR 53286 on October 21, 1994, is adopted as a final rule with the following changes:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 and the note following the citation is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 36, 33 CFR parts 150, 151, 153, and 157.

2. In § 155.100, revise paragraph (a) introductory text and add a new paragraph (c) to read as follows:

§ 155.100 [Amended].

(a) Subject to the exceptions provided for in paragraph (b) and (c) of this section, this part applies to each ship that:

* * * * *

(c) Section 155.480 applies to each tank vessel with a cargo capacity of 1,000 or more cubic meters (approximately 6,290 barrels), loading oil or oil reside as cargo that is operated under the authority of the United States, wherever located, or operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States.

3. In § 155.480, revise paragraphs (b) introductory text and (f) to read as follows:

§ 155.480 Overfill devices.

* * * * *

(b) Each tank vessel with a cargo capacity of 1,000 or more cubic meters (approximately 6,290 barrels), loading oil or oil residue as cargo, must have one overfill device that is permanently installed on each cargo tank and meets the requirements of this section.

* * * * *

(f) This section does not apply to tank vessels that carry asphalt, animal fat, or vegetable oil as their only cargo.

Dated: September 4, 1997.

R.D. Herr,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 97–24586 Filed 9–16–97; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 96–186; FCC 97–215]

Assessment and Collection of Regulatory Fees for Fiscal Year 1997; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a footnote in the FCC's Report and Order for the final rule regarding Assessment and Collection of Regulatory Fees for Fiscal Year 1997, published in the

Federal Register issue of July 11, 1997 (62 FR 37408).

EFFECTIVE DATE: September 15, 1997.

FOR FURTHER INFORMATION CONTACT: Terry D. Johnson, 202–418–0445; e-mail: Tjohnson@fcc.gov.

SUPPLEMENTARY INFORMATION: This document corrects footnote 23 of the Report and Order in the above-captioned proceeding, which appeared on page 37416 in the **Federal Register** issue of July 11, 1997 (62 FR 37416). Footnote number 23 associated with paragraph 50 erroneously stated that the AM station population was determined using the 1mV/m field strength contour, and it further stated that the FM station population was determined using the 60 dBuV/m contour. For all AM stations, the 0.5 mV/m contour was used. For Class B FM stations, the 54 dBuV/m contour was used. For Class B1 FM stations, the 57 dBuV/m contour was used. For all other FM Classes, the 60 dBuV/m contour was used.

Correction

Therefore, footnote 23 should be corrected to read as follows:

DataWorld MediaXpert Service prepared for NAB a calculation of the signal coverage for each station, and overlaid this data onto 1990 decennial census population data to estimate the population contained within each station's signal coverage area. For each AM station, estimated soil conductivity data was retrieved for each of 360 radial azimuths around the transmitter site, the standard horizontal plane radiation pattern was calculated and any pertinent pattern augmentations applied, and the distance to the 0.5 mV/m field strength contour for each of the 360 radials was calculated using the appropriate propagation curves and the FCC equivalent distance method. For each FM station, terrain averages were calculated from the USGS/DMA 3 arc second terrain database for each of 360 radial azimuths, the HAAT was calculated using the height of the center of radiation AMSL and processed with FM contour calculation software, pertinent directional antenna information was applied, and the distance to the 54 dBuV/m (for Class B stations), 57 dBuV/m (for Class B1 stations), or 60 dBuV/m (for all other classes of station) contour was calculated using the appropriate FCC F[50,50] curves. For both AM and FM, the distance to contour data was applied to population counting software using 1990 census data to determine the total population within each station's coverage area.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–24724 Filed 9–16–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 97–289]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Second Report and Order* (*Order*) released August 18, 1997 adopts, with minor modifications the recommendations of the North American Numbering Council relating to local number portability administration. The requirements, standards and procedures adopted in this *Order* are needed to give the telecommunications industry clear guidelines as to how to implement long-term local number portability.

DATES: The final rule is effective October 17, 1997. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Steven Teplitz, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order* adopted August 14, 1997, and released August 18, 1997. The full text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. 20554 or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–289.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Regulatory Flexibility Analysis

As required by the Regulatory Flexiblity Act, the *Order* contains a Final Regulatory Flexibility Analysis which is set forth in the *Order.* A brief description of the Final Regulatory Flexibility Analysis follows.

Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the *Second Report and Order* with regard to small entities. This analysis includes: (1) a succinct statement of the need for, and objectives of, the Commission's decisions in the *Second Report and Order*; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, the final regulatory analysis of the *First Report and Order and Further Notice of Proposed Rulemaking*, 61 FR 38605 (July 25, 1996) (*First Report & Order*) and the supplemental final regulatory analysis of the *First Memorandum Opinion and Order on Reconsideration*, 62 FR 18280 (April 15, 1997) (*First Order on Reconsideration*), and a summary of the Commission's assessment of these issues; (3) a description of and an estimate of the number of small entities to which the *Second Report and Order* will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the *Second Report and Order*, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; and (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. The requirements and rule adopted in this *Second Report and Order* are necessary to implement the provisions of the Telecommunications Act of 1996.

Synopsis of Second Report and Order

Introduction

1. On June 27, 1996, the Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking*, 61 FR 38605 (July 25, 1996) (*First Report & Order*) in this docket. The *First Report & Order* established rules designed to implement section 251(b) of the Communications Act of 1934, as amended (the Act), which requires all local exchange carriers (LECs) to offer, ''to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' 47 U.S.C. § 251(b)(2). Among other things, in the *First Report & Order*, the Commission directed the North American Numbering Council (NANC) to make recommendations regarding specific aspects of local number portability implementation. The NANC forwarded its recommendations to the Commission on May 1, 1997, in a report from its Local Number Portability Administration Selection Working Group, dated April 25, 1997 (*Working Group Report*).

2. In this *Second Report & Order*, the Commission adopts the recommendations of the NANC as set forth in the *Working Group Report*, with the modifications discussed below. Specifically, we (1) adopt the NANC's recommendation that seven regional number portability databases be established coinciding with the boundaries of the seven original Bell Operating Company (BOC) regions; (2) adopt the NANC's recommendation that Lockheed Martin IMS (Lockheed Martin) and Perot Systems, Inc. (Perot Systems) serve as the administrators for the regional number portability databases; (3) adopt the technical and operational standards proposed by the NANC for the provision of number portability by wireline carriers; (4) require that the carrier immediately preceding the terminating local exchange carrier be responsible for ensuring that number portability databases are queried; (5) permit LECs to block calls that have not been queried when failure to do so is likely to impair network reliability; (6) direct the NANC to complete and submit to the Commission recommendations on the sharing of numbering information between the regional number portability database administrators and the North American Numbering Plan Administrator; (7) direct the NANC to develop standards and procedures regarding the provision of number portability by CMRS providers; (8) adopt, on an interim basis only, the NANC's recommendation that the regional limited liability companies (LLCs), already established by carriers in each of the original BOC regions, manage and oversee the local number portability administrators, subject to review by the NANC; (9) direct the NANC to provide national-level oversight of local number portability administration; and (10) adopt the NANC's recommendation that the Commission create a committee to oversee number portability deployment in the top 100 Metropolitan Statistical Areas.

Discussion

Local Number Portability Databases

Geographic coverage of number portability databases: 3. *Databases By BOC Region*. We adopt the NANC's recommendation that a Number Portability Administration Center database be established for each of the original BOC regions so as to cover, collectively, the 50 states, the District of Columbia and the U.S. territories in the North American Numbering Plan Area. Deploying number portability databases by BOC region will: (1) build on the efforts of the LLCs, which already have chosen local number portability database administrators in each of the original BOC regions; (2) make use of the technical and organizational experience of the state-sponsored associations and workshops; and (3) minimize the cost and complexity of use of the databases by the BOCs. Moreover, we find it significant that, according to the NANC, industry fora at all levels have agreed to the designation of BOC territories as the appropriate Number Portability Administration Center coverage areas. We conclude that establishing a database for each of the original BOC regions would serve the public interest.

4. We decline, at this time, to grant CBT's request that it be allowed to select one regional Number Portability Administration Center for purposes of fulfilling its number portability responsibilities. We find that the current record is insufficient to make a finding that granting CBT's request will not raise technical difficulties with respect to local number portability implementation or have negative financial consequences for carriers responsible for conducting the queries necessary to route calls to the proper terminating carrier. Because the record on this issue is insufficient for us to make a determination whether the benefits to CBT of granting its request outweigh the potential harm to other carriers, we decline to make such a determination at this time. Instead, we direct the NANC to review CBT's request and to make a recommendation to the Commission, on or before December 15, 1997. Specifically, we direct the NANC to address the question of whether LECs with contiguous operating areas that overlap more than one number portability database region should be allowed to select a single Number Portability Administration Center.

5. *U.S. Territories.* We adopt the NANC's recommendation that each U.S. territory in the North American Numbering Plan be permitted to choose one of the seven regional databases for purposes of implementing number portability. Because of their various locations, the U.S. territories are not included within any BOC's territory, nor do they collectively comprise another, separate region. The NANC's recommendation that each territory choose a particular regional database provides a reasonable alternative to creating additional Number Portability Administration Center regions that are much smaller than the Number Portability Administration Center regions that are based on BOC regions.

6. We further find that allowing the U.S. territories to select the regional database they will use to provide number portability will not significantly change the size or complexity of any one database or otherwise undermine the public interest benefits of the regional database system. Accordingly, we hereby direct each U.S. territory to: (1) select a regional database that carriers in that territory will use to provide number portability; and (2) notify the Commission and the NANC in writing regarding this selection within 45 days of the release of this order. Each territory's selection of a particular database is final.

Selection of database administrators: 7. We adopt the NANC's recommendation that Lockheed Martin serve as local number portability database administrator for the Northeast, Mid-Atlantic, Midwest and Southwest regions, and that Perot Systems serve as the local number portability database administrator for the Southeast, Western and West Coast regions. As noted above, the *First Report & Order* directed the NANC to select one or more local number portability database administrators that are independent, non-governmental entities that are not aligned with any particular telecommunications industry segment. We find that the criteria utilized by the NANC in reviewing and evaluating the selection process employed by the various service providers at the regional level were sufficient to ensure that the local number portability database administrators ultimately recommended meet the Commission's requirements. We further note that no party to the proceeding objects to the selections. We, however, may review and, if necessary, modify our approval of the recommended local number portability administrators in the event that negotiations between Lockheed Martin or Perot Systems and the LLCs do not result in completed master contracts for each region.

8. We also adopt the NANC's recommendations that (1) LLCs be allowed to elect to have the local number portability database administrator for separate regions serve those regions using the same platform; and (2) database administrators be allowed to create ''virtual Number Portability Administration Centers.'' We reiterate our conclusion that, absent technical advances or other changed circumstances, it would not be in the public interest for number portability to be provided in this manner. We clarify, however, that our prohibition on the

establishment of one national database does not preclude local number portability database administrators from using the same computer hardware or software to store, utilize or provide access to multiple databases by, for example, separating regional databases stored on the same computer or system of computers by means of database partitions. We underscore, however, that the Chief of the Common Carrier Bureau retains delegated authority to take appropriate action regarding any existing or potential problems associated with serving one or more regions using the same database platform.

Number of database administrators: 9. By the time the NANC submitted its recommendations to the Commission, the seven regional LLCs had independently selected two separate database administrators: Lockheed Martin and Perot Systems. For that reason, the NANC concluded it was unnecessary to address whether more than one administrator should be required. We find that the NANC acted reasonably in assessing whether having two administrators would be appropriate, and thus we decline to disturb this result. Further, we agree, for the reasons given by the NANC, that there are clear advantages to having at least two experienced number portability database administrators that can compete with and substitute for each other, thereby promoting cost-effectiveness and reliability in the provision of Number Portability Administration Center services. While we recognize the likely benefits of having at least two administrators, we do not, at this time, adopt a requirement that two or any other number of entities serve as local number portability database administrators.

General duties of database administrators: 10. We adopt the NANC's recommendations regarding the general duties of the local number portability database administrators. The NANC defined these duties based on input from the industry at the national, regional and state levels, and none of the commenting parties objects to them. These duties also appear to be consistent with the types of activities the Commission tentatively concluded would be necessary to deploy long-term number portability. For example, the Commission tentatively concluded that costs for long-term portability would be attributable to the ''development and implementation of the hardware and software for the database,'' to the ''maintenance, operation, security, administration, and physical property associated with the database,'' and to the ''uploading, downloading, and querying'' associated with the database. Moreover, the duties appear to be reasonably comprehensive, so as to enable the number portability administrators to implement the architecture and technical specifications developed by the NANC, and neither the Commission nor the parties has identified any record evidence that indicates a need to adopt general duties in addition to those recommended by the NANC. We also note that the NANC based these general duties on the more specific duties described in the Functional Requirements Specification (Functional Requirements Specification or FRS) and Interoperable Interface Specification (Interoperable Interface Specification or IIS) and that the NANC's description of the underlying specific duties in the FRS and IIS as ''standard functions'' suggests that both the specific and general duties the NANC recommends are noncontroversial.

Technical and Operational Standards

Uniform national standards: 11. We agree with the NANC that the adoption of uniform Functional Requirements Specification, Interoperable Interface Specification, Provisioning Process Flows, policy for the porting of reserved and unassigned numbers, and compliance and change management processes would provide significant advantages for the implementation of local number portability. We conclude that uniform national standards in this area will promote efficient and consistent use of number portability methods and numbering resources on a nationwide basis, ensure the interoperability of networks, and facilitate the ability of carriers to meet number portability implementation deadlines. We further conclude that uniform national standards should minimize expenditure of time and resources, maximize use of local number portability resources for all companies, produce timely and cost effective offers of local number portability related products, enable switch vendors to spread their costs over a larger base of customers, eliminate the need to develop several different versions of number portability software, and improve service quality for carriers providing service in multiple regions. Furthermore, uniform national standards will allow vendors to develop standard products rather than multiple versions of hardware and software necessary to implement local number portability based on regional differences, resulting in more timely and cost effective product offerings for local service providers.

Specific technical standards: 12. We conclude that the NANC's recommended technical and operational standards are consistent with the Commission's performance criteria for implementing local number portability. In adopting the standards as currently set forth in the *Working Group Report* and its appendices as a framework for implementation of local number portability, we recognize that ongoing changes to these specifications and processes likely will be needed as the industry gains operational experience in implementing long-term number portability. We urge the industry, working under the auspices of the NANC, to maintain, update and modify the technical and operational standards as necessary, and to establish a long-term compliance process for service providers and local number portability administrators.

13. *Number Portability Administration Center Service Management System Provisioning Process Flows (Provisioning Process Flows).* We adopt the Provisioning Process Flows as set forth in Appendix E to the *Working Group Report* and recommended by the NANC as industry standards for use in each Number Portability Administration Center region.

14. We conclude that the uniform standards for Provisioning Process Flows proposed by the NANC are essential to the efficient deployment of local number portability across the nation. In particular, we find that uniform Provisioning Process Flows will help ensure that communication between and among service providers (using local Service Management Systems) and local number portability administrators (using Number Portability Administration Center Service Management Systems) proceed in a clear and orderly fashion so that number portability requests are handled in an efficient and timely manner. We note that no commenter opposed adoption of these standard Provisioning Process Flows. We direct the NANC to make recommendations regarding future modifications to the Commission as necessary.

15. *Number Portability Administration Center Service Management System Standards—Functional Requirements Specification.* We adopt the NANC's recommendation that local number portability administrators and any entity directly connecting to the Number Portability Administration Center Service Management System be required to use

the Number Portability Administration Center Service Management System Functional Requirements Specification as described in the *North American Numbering Council—Functional Requirements Specification—Number Portability Administration Center—Service Management System*, Version 1.1, dated May 5, 1997 (*NANC FRS*). The *NANC FRS* will serve as an industry standard for use in developing and maintaining the Number Portability Administration Center Service Management System in each of the seven Number Portability Administration Center regions.

16. The *NANC FRS* was developed primarily to support the provisioning of wireline number portability. The NANC has not fully considered or developed distinct number portability requirements applicable to CMRS providers. Therefore, modifications to the *NANC FRS* may be required to support wireless number portability. We direct the NANC to recommend modifications to the *NANC FRS* as necessary to support wireless number portability.

17. *Number Portability Administration Center Service Management System Standards—Interoperable Interface Specification.* We adopt the NANC's recommendation that the local number portability administrators and any entity directly connecting to the Number Portability Administration Center Service Management System use the Number Portability Administration Center Service Management System Interoperable Interface Specification as described in the *North American Numbering Council—Interoperable Interface Specification—Number Portability Administration Center—Service Management System*, Version 1.0, dated April 7, 1997 (*NANC IIS*). The *NANC IIS* will serve as an industry standard for use in developing and maintaining the Number Portability Administration Center Service Management System interfaces in each of the seven Number Portability Administration Center regions.

18. The *NANC IIS* was developed primarily to support wireline number portability. The NANC has not fully considered or developed unique wireless number portability requirements. Therefore, modifications to the *NANC IIS* may be required to support wireless number portability. As discussed more fully below, we direct the NANC to recommend modifications to the *NANC IIS* as necessary to support wireless number portability.

19. *Policy for the Porting of Reserved and Unassigned Numbers and Compliance Process.* We adopt the NANC's recommendations relating to the porting of reserved and unassigned numbers developed and documented in Appendix D to the *Working Group Report.* Specifically, the NANC recommends that customers should be allowed to port telephone numbers that they have reserved under a legally enforceable written agreement but that have not been activated. The NANC further recommends that such reserved numbers: (1) be treated as disconnected telephone numbers when the customer is disconnected or when the service is moved to another service provider and the reserved numbers are not ported to subsequent service providers; and (2) may not be used by another customer. The Working Group's Architecture Task Force points out that implementation of the capability to port reserved numbers may require modifications to operational support systems and may not be available initially. The NANC also recommends that service providers not be allowed to port unassigned numbers unless and until there is an explicit authorization for such porting from a regulator with appropriate jurisdiction.

20. In adopting the NANC's recommendation for the porting of reserved and unassigned numbers policy, we direct the NANC to monitor the implementation of this policy, and make appropriate recommendations to the Commission, including, if deemed necessary by the NANC, guidelines for administering ported unassigned numbers that are no longer reserved by the customer that originally ported them.

21. We also conclude that the NANC has recommended a reasonable process for enforcing compliance with the policy pertaining to the porting of reserved and unassigned numbers. If a service provider finds that it is disadvantaged by instances of non-compliance with the policy for the porting of reserved and unassigned numbers by another service provider, the NANC recommends several courses of action. First, the aggrieved service provider may contact the service provider with which it has a dispute to resolve the issue through informal negotiations. Should these efforts prove unsuccessful, the aggrieved service provider may bring the issue to the regional LLC for resolution via the LLC's dispute resolution process, to the NANC, to the state public utilities commission, or to other bodies as deemed appropriate by the service provider.

22. *Change Management Process.* We adopt the NANC's recommendations concerning the change management process. We agree with the NANC that it is important that a neutral entity oversee the change management process, so that: (1) there is consistency in the submission and consideration of changes to the architectural, technical and operational specifications and procedures; (2) uniform processes are implemented; and (3) no individual carriers or industry segments are disadvantaged. We find that the NANC's proposed change management process will enable the industry to make changes to the architectural, technical and operational specifications and procedures in a timely and uniform manner. The role of the regional LLCs in managing changes to the number portability technical and operational specifications, however, is subject to our planned review of the role of the regional LLCs in implementing long-term number portability. We direct the NANC to continue its oversight of architectural, technical and operational change management processes and to make additional recommendations to the Commission as necessary. In the event the NANC is dissolved at some point in the future, we will, at that time, either establish or select an oversight body to perform the change management functions now delegated to the NANC.

23. We also adopt the NANC's recommendations as presented in Appendix D to the *Working Group Report*, with the exception of the NANC's recommendation on the blocking of default routed calls.

24. *N–1 Call Routing.* The NANC recommends that the carrier in the call routing process immediately preceding the terminating carrier, designated the ''N–1'' carrier, be responsible for ensuring that database queries are performed. We adopt the NANC's recommendation that the N–1 carrier be responsible for ensuring that databases are queried, as necessary, to effectuate number portability. The N–1 carrier can meet this obligation by either querying the number portability database itself or by arranging with another entity to perform database queries on behalf of the N–1 carrier.

25. The efficient provisioning of number portability requires that all carriers know who bears responsibility for performing queries, so that calls are not dropped because the carrier is uncertain who should perform the database query, and so that carriers can design their networks accordingly or arrange to have database queries performed by another entity. Consistent with our finding in the *First Memorandum Opinion and Order on*

Reconsideration, 62 FR 18280 (April 15, 1997) (*First Order on Reconsideration*), we conclude that the Location Routing Number system functions best if the N–1 carrier bears responsibility for ensuring that the call routing query is performed. Under the Location Routing Number system, requiring call-terminating carriers to perform all queries may impose too great a burden on terminating LECs. In addition, obligating incumbent LECs to perform all call routing queries could impair network reliability.

26. We note, however, that the requirement that the N–1 carrier be responsible for ensuring completion of the database query applies only in the context of Location Routing Number as the long-term number portability solution. In the event that Location Routing Number is supplanted by another method of providing long-term number portability, we may modify the call routing process as necessary. We note further that if the N–1 carrier does not perform the query, but rather relies on some other entity to perform the query, that other entity may charge the N–1 carrier, in accordance with guidelines the Commission will establish to govern long-term number portability cost allocation and recovery.

27. *Default Routing.* The NANC recommends that we permit carriers to block ''default routed calls'' coming into their networks. A ''default routed call'' situation would occur in a Location Routing Number system as follows: when a call is made to a telephone number in an exchange with any ported numbers, the N–1 carrier (or its contracted entity) queries a local Service Management System database to determine if the called number has been ported. If the N–1 carrier fails to perform the query, the call is routed, *by default*, to the LEC that originally serviced the telephone number. The original LEC, which may or may not still be serving the called number, can either query the local Service Management System and complete the call, or ''block'' the call, sending a message back to the caller that the call cannot be delivered. The NANC found that compelling LECs to query all default routed calls could impair network reliability, and that allowing carriers to block default routed calls coming into their networks is necessary to protect against overload or congestion that could result from an inordinate number of calls being routed by default to the original LEC. In light of these network reliability concerns, we will allow LECs to block default routed calls, but only in specific circumstances when failure to do so is likely to impair network reliability.

28. In the *First Report & Order*, we required CMRS providers to have the capability of querying number portability database systems in order to deliver calls from their networks to ported numbers anywhere in the country by December 31, 1998. We established this deadline so that CMRS providers would have the ability to route calls from their customers to a wireline customer who has ported his or her number, by the time a substantial number of wireline customers have the ability to port their numbers between wireline carriers. Under this deployment schedule, the initial deployment of long-term local number portability for wireline carriers will occur prior to the date by which CMRS providers must be able to perform database queries. During this period, CMRS providers are not obligated by our rules to perform call routing queries or to arrange for other entities to perform queries on their behalf. Thus, if wireline LECs are allowed to block default routed calls, calls originating on wireless networks (to the extent that the CMRS provider is the N–1 carrier) could be blocked. For this reason, we will only allow LECs to block default routed calls when performing database queries on default routed calls is likely to impair network reliability. We also require LECs to apply this blocking standard to calls from all carriers on a nondiscriminatory basis. In the event that a CMRS or other service provider believes that a LEC is blocking calls under circumstances unlikely to impair network reliability, such service provider may bring the issue before the NANC. We direct the NANC to act expeditiously on these issues. Although CMRS providers are not responsible for querying calls until December 31, 1998, we urge them to make arrangements with LECs as soon as possible to ensure that their calls are not blocked. We note that if a LEC performs database queries on default routed calls, the LEC may charge the N–1 carrier, pursuant to guidelines the Commission will establish regarding long-term number portability cost allocation and recovery.

29. *Disconnected Ported Numbers.* The NANC also recommends that when a ported telephone number is disconnected, that telephone number be released or ''snapped-back'' to the original service provider assigned the NXX. We find this NANC recommendation reasonable and the result of industry-wide consensus. Accordingly, we adopt the recommendation. We ask the NANC to prepare recommendations to clarify the policy if it determines that there is confusion among the industry regarding its application.

30. *High Volume Call-In Networks.* The Working Group's Architecture Task Force did not reach consensus on how to provide local number portability to high volume call-in networks. Currently, a service provider may move a customer's telephone number(s) to a high volume call-in network when the service provider determines that the customer regularly generates large volumes of terminating traffic over a short period of time, so that the surge in telephone calls will not overload the network. A high volume call-in network allows all such customers to be assigned numbers in an NPA–NXX (*e.g.*, 213–520) dedicated for high volume call-in. Switches in the network can be designed to segregate traffic for high volume call-in numbers and route it via trunk groups that are dedicated to the network and do not overflow to other trunk groups. The dedicated trunks are engineered to handle a particular traffic load and, in this way, traffic volumes are limited, and traffic to high calling volume numbers cannot congest the network.

31. The Location Routing Number method for local number portability requires a database query to be performed on calls to portable NPA-NXXs before route selection takes place. If high volume call-in network numbers are portable, they could generate large volumes of queries that could congest the Service Control Points. Also, if a high volume call-in network number is ported and a location routing number is returned in the database response, the call will not be routed via trunks dedicated to high volume call-in networks. This congestion can in turn affect other services and compromise the design of high volume call-in network networks.

32. We find that additional study is necessary before we allow porting of numbers to high volume call-in networks. We, therefore, urge the industry, under the auspices of the NANC, to study this matter further and prepare recommendations on how best to incorporate high volume call-in networks into the local number portability scheme. We direct the NANC to continue to examine this matter and make recommendations to the Commission.

Numbering Information Sharing

33. We acknowledge and applaud the steps already taken by the NANC to coordinate its efforts with those of the Industry Numbering Committee to develop a work plan and guidelines to

implement number pooling, and we direct the NANC to continue to work with the Industry Numbering Committee and any other industry bodies it deems appropriate in developing numbering information sharing guidelines. We also direct the NANC to address the needs of CMRS providers to ensure that number conservation efforts do not unfairly discriminate against such carriers. We further direct the NANC to make recommendations to the Commission as necessary to develop guidelines for numbering information sharing.

Number Portability and CMRS Providers

34. We recognize the significant time constraints imposed on the NANC for the development of recommended standards and procedures so that wireline carriers can meet the Commission's implementation schedule, which commences October 1, 1997. We are also aware that under our number portability deployment schedule, CMRS providers are not required to have the capability of querying number portability database systems in order to deliver calls from their networks to ported numbers until December 31, 1998 and are not required to have the ability to port numbers until June 30, 1999. We, therefore, conclude that it was reasonable for the NANC to defer making recommendations at this time with respect to the implementation of local number portability by CMRS providers. Our adoption of the NANC's recommendations set forth in its May 1, 1997 transmittal, however, should not be viewed in any way as an indication that we believe our plan for implementing local number portability is complete. The industry, under the auspices of the NANC, will probably need to make modifications to local number portability standards and processes as it gains experience in implementing number portability and obtains additional information about incorporating CMRS providers into a long-term number portability solution and interconnecting CMRS providers with wireline carriers already implementing their number portability obligations.

35. We find that adoption of the current NANC recommendations should not be deferred pending resolution of all wireless concerns. While delaying implementation of number portability until all wireless concerns are fully addressed might result in an easier transition to a number portability environment for CMRS providers, we believe that such delay would be contrary to the public interest because a far greater number of wireline customers could not, during the period of delay, switch local providers without also changing telephone numbers. At the same time, we recognize that it will probably be necessary to modify and update the current local number portability standards and procedures in order to support wireless number portability. Thus, we direct the NANC to develop standards and procedures necessary to provide for CMRS provider participation in local number portability. We further direct the NANC to present its wireless recommendations to the Commission as soon as possible, but not later than nine months after the release of this *Second Report & Order*. CMRS providers will need clear guidelines as to how to query the Service Management System databases to determine proper call routing, as well as how to implement wireless number portability. The NANC must also consider other issues of concern to CMRS providers, such as how to account for differences between service area boundaries for wireline versus wireless services and how to implement number portability in a roaming environment. In revising local number portability standards to incorporate the concerns of the wireless industry, the NANC should remain cognizant of the goals of ensuring the interoperability of networks and nondiscrimination as applied to CMRS providers. In particular, in making its recommendations, the NANC is to ensure that CMRS providers are not unfairly disadvantaged by virtue of the fact that wireline number portability is being implemented before number portability for CMRS providers.

36. CTIA reports that it and other industry groups are currently developing technical solutions for implementing wireless number portability. We direct the NANC to monitor these industry efforts and to make recommendations to the Commission for modifications to the various technical and operational standards as necessary for CMRS providers to efficiently implement number portability and to allow CMRS providers to interconnect with a wireline number portability environment.

Local Number Portability Oversight Procedures

37. We adopt, with certain modifications, the NANC's recommendations regarding the oversight and management of the local number portability administrators. Specifically, we adopt, on an interim basis, the NANC's recommendation that the LLCs provide immediate oversight and management of the local number portability administrators. The LLCs should serve in this role until the Commission concludes a rulemaking to examine the issue of local number portability administrator oversight and management including, but not limited to, the question of whether the LLCs should continue to act in this capacity. The Commission will initiate such a rulemaking no later than June 30, 1998. In addition, we adopt the NANC's recommendation that it provide ongoing general oversight of number portability administration, including oversight of the individual LLCs, subject to Commission review. We also adopt the NANC's recommendation that the Commission create a committee, chaired by the Chief of the Common Carrier Bureau, to oversee number portability deployment in the top 100 MSAs.

38. *Oversight by the LLCs*. We conclude that, at least in the short term, the LLCs should provide immediate oversight for the regional local number portability administrators. Specifically, we conclude that: (1) there are advantages to allowing LLCs to provide immediate oversight of the local number portability administrators; (2) we have no basis for concluding that the LLCs will not treat all carriers fairly; and (3) the record regarding local number portability administrator oversight does not permit us to conclude that other proposals would be preferable to LLC oversight.

39. We agree with the NANC that there will likely be a need to modify some requirements to permit database system enhancements and other modifications as local number portability is deployed throughout each region. Without a single entity to oversee such modifications in each region, local number portability administrators would likely be faced with varied, if not conflicting, proposals from the carriers utilizing the database regarding how the modifications should be implemented. The need for the local number portability administrator to reconcile such varied proposals, in turn, could potentially delay the administrator from making necessary modifications.

40. We conclude that the LLCs are the entities that are best able to provide immediate oversight of the local number portability administrators at this time. Because the LLCs were responsible for negotiating the master contracts with their respective local number portability administrators, each LLC is the entity with the greatest expertise regarding the structure and operation of the database for its region. Therefore, with respect to each region, using an entity other than

the LLC to provide immediate oversight of the local number portability administrator would waste the LLC's valuable expertise and run the risk that necessary modifications to the database system may be delayed.

41. Bell Atlantic and other parties object to LLC oversight and management of the local number portability administrators based primarily on the fact that, because new entrants will outnumber incumbent LECs in each region, the new entrants that belong to the individual LLCs will be able to outvote the incumbent LEC members if they so choose. They suggest that, with respect to decisions that do not require unanimity by the LLCs, new entrant members of an LLC could vote in ways that give new entrants competitive advantages over incumbent LECs in the provision of number portability.

42. Any decision making process that operates on the basis of majority votes runs the risk that the group will decide to take action that disadvantages some members. Requiring unanimity for all oversight decisions, however, could make such oversight a cumbersome, time-consuming process. In light of the concerns expressed by incumbent LECs, we adopt the NANC's recommendation that LLCs provide immediate oversight of the local number portability administrators, but such oversight shall be on an interim basis. Specifically, the LLCs may serve in this role only until such time as the Commission concludes further proceedings to examine the issue of local number portability administrator oversight and management in general and, in particular, the question of whether the LLCs should continue to act in this capacity. The Commission will initiate such further proceedings no later than June 30, 1998. We note that Phase I of the Commission's long-term number portability implementation schedule will be completed March 31, 1998. We believe, therefore, that initiating a proceeding no later than June 30, 1998 will enable the parties and the Commission to acquire practical experience with number portability implementation, and to determine whether problems arise as a result of oversight and management envisioned by LLCs.

43. We will permit LLC oversight, on an interim basis, for several reasons. First, the current record does not support a finding that the LLCs will act in a fashion that is not fair to all carriers. To the contrary, two incumbent LECs applaud the LLCs' efforts to date, and BellSouth states affirmatively that the LLCs have remained neutral during the administrator selection and contracting phases of number portability deployment. We also note that the Maryland Public Service Commission, in an order regarding the conflict between Bell Atlantic and the Mid-Atlantic LLC, required Bell Atlantic to sign a non-disclosure form before it could review the LLC's standard user agreement with Lockheed Martin. The Maryland Commission also directed the regulated members of the Mid-Atlantic LLC to secure a release from Lockheed and to furnish a copy of the proposed standard user agreement to Bell Atlantic. Further, the Maryland Commission directed the Mid-Atlantic LLC and Bell Atlantic to negotiate to resolve any areas of disagreement regarding the user agreement. If the parties cannot resolve their differences regarding the user agreement, the Maryland Commission has said that it will resolve these differences for them. Because the record contains no other specific allegations of anticompetitive activities by the LLCs, we are not persuaded on the basis of the current record that partiality by LLCs is likely to occur in the immediate future.

44. Second, we agree with WorldCom, Sprint and AT&T that there are significant protections to ensure fair and impartial actions by the LLCs. As the NANC states, membership in the LLCs is open to any local exchange carrier that intends to port numbers, LLC meetings are generally open to the public, and members of the LLCs have agreed to require a supermajority or unanimity with respect to voting on certain important decisions, such as execution of the master contract. Further, the NANC explains that all carriers that need to access the database for rating, routing, or billing purposes will have the same access to the local number portability administrator's service, even if the carrier is not a member of the LLC. We also observe that the LLCs have agreed to follow any and all directives from state and federal regulators. In addition, we note that oversight by the NANC and by state and federal regulators provides additional protection against the possibility of partiality by the LLCs in their oversight of the local number portability administrators.

45. Third, we reject the arguments of Bell Atlantic and NYNEX and others that permitting the LLCs to oversee the number portability database administrators would be inconsistent with the *First Report & Order* because the LLCs are not, in their view, neutral. In the *First Report & Order,* we specified that the local number portability administrators must be ''independent, non-governmental entities that are not aligned with any particular telecommunications industry segment.'' Contrary to the arguments of Bell Atlantic and NYNEX, this neutrality requirement applies to number portability database administrators, not to entities that oversee the administrators. In any event, because we find that there is no basis in the current record for us to conclude that the LLCs will act in a fashion that is not fair to all carriers, we also cannot conclude that the LLCs' interim oversight and management of the number portability administrators will prevent the administrators from acting impartially.

46. We wish to underscore, however, that we remain committed to ensuring that number portability administration is carried out in an impartial manner. In the *First Report & Order,* we delegated authority to the Chief of the Common Carrier Bureau to monitor the progress of number portability implementation for wireline carriers and to take appropriate action to ensure compliance with the implementation schedule. We expressly delegate authority to the Chief of the Common Carrier Bureau to monitor the activities of the carriers that comprise the LLCs and to take any action necessary to remedy possible partiality by those carriers with respect to the LLCs' oversight and management of the local number portability administrators.

47. We also decline, at this time, to grant Bell Atlantic and NYNEX's request that local number portability administrators be required to provide number portability services under tariff as a means of avoiding competitive abuses by new entrants through the LLCs. Bell Atlantic argues that because the Commission ordered the administrator of the 800 number database to provide access to its database under tariff, the Commission must do the same with respect to local number portability databases. We find that Bell Atlantic's reliance on our decision in the 800 number database context is misplaced. In that decision, we found that ''[o]n balance * * * the better course for now'' was to require that access to the 800 database be tariffed because we determined that such treatment was necessary to ensure that 800 database access was provided at reasonable rates and on nondiscriminatory terms. We do not find the same concerns applicable to access to local number portability databases. First, section 251 of the Act requires that the cost of number portability ''shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' 47

U.S.C. 251(e)(2). Thus, the method for calculating the amount any particular carrier will pay for obtaining services from a local number portability database administrator will be determined by the Commission, not by the LLC. Second, as noted above, the local number portability administrators, pursuant to the master contracts negotiated by the LLC, will offer access to their databases to all carriers on the same terms and conditions, whether or not the carrier is a member of an LLC.

48. In addition, we cannot conclude from the current record that, as a practical matter, CMRS providers will be excluded from participating in the LLCs' management and oversight activities as they affect CMRS providers. As stated above, in order to complete the tasks associated with wireline number portability in accordance with the Commission's schedule, the NANC directed its attention to developing recommendations primarily relating to the wireline portion of the industry and did not fully address wireless concerns. Further, the NANC recognized that certain requirements, such as the FRS and IIS, must be revised to incorporate the work of CTIA and others on the technical aspects of the provision of number portability by CMRS providers. We share CTIA's concern that number portability be administered in an impartial manner, and we strongly encourage both the NANC and the LLCs to review their policies to ensure that they have not, even inadvertently, limited the participation of CMRS providers in the LLCs or other aspects of number portability administration. While there is no evidence in the record that any CMRS provider has been denied membership in an LLC, we encourage the LLCs to make membership available to all carriers that intend to port numbers, whether those carriers intend to do so immediately or sometime in the future. We do not believe, however, that CTIA's arguments justify rejection or modification of the NANC's recommendations at this time.

49. Other proposals for local number portability administrator oversight suggested by incumbent LECs include: (1) adopting specific rules to govern the operation of the local number portability administrators; (2) delegating oversight of the local number portability administrators to an industry or standards body that operates by consensus; (3) requiring local number portability administrators to file their master agreements with the Commission; (4) delegating local number portability administrator oversight to a national LLC. As a general matter, the parties making these proposals offer little more than bare assertions that these alternatives would be preferable to LLC oversight, without explanation or justification for their conclusions. We find that the current record does not support a finding that any of these proposals would be preferable to LLC oversight. Consequently, we lack sufficient analysis regarding these proposals to make a reasoned decision regarding their adoption.

50. The LLCs are currently requiring that database administrators provide uniform terms and conditions to all carriers. WorldCom asks that the Commission expressly endorse the LLCs' requirement that number portability administrators provide same terms and conditions to all carriers that must provide number portability in a region, regardless of whether a particular carrier belongs to the LLC. We agree with WorldCom that no carrier should be able to use the terms and conditions of obtaining number portability database services to gain a competitive advantage over other carriers. In the *First Report & Order,* we determined that it is in the public interest for the number portability databases to be administered by one or more neutral third parties because neutral third party administration ''ensures the equal treatment of all carriers and avoids any appearance of impropriety or anti-competitive conduct.'' Thus, our order expressed an expectation that a neutral administrator would ensure equal treatment of all carriers; we did not affirmatively require uniform treatment. Based on the information presently available, the LLC requirement for uniform terms and conditions appears to be reasonable. Nevertheless, given the limited record, we do not preclude further consideration of this issue if any party can demonstrate that the LLCs' requirement that database administrators provide uniform terms and conditions to all carriers is unfair to them.

51. *Oversight by the NANC Generally.* We adopt the NANC's recommendation that it provide general oversight of number portability administration on an ongoing basis. Specifically, we establish a procedure whereby parties may bring matters regarding number portability administration to the NANC so that it may recommend a resolution of those matters to the Commission.

52. The NANC represents a broad cross section of carriers with interests in numbering and number portability issues and has developed substantial expertise while formulating its recommendations regarding number portability implementation. Application of this expertise will be critical in addressing future issues regarding number portability deployment, including implementation of number portability by CMRS providers and coordination of number portability administration with numbering administration. Further, we find that the NANC provides a valuable forum in which carriers are able to consider, at the national level, possible ways to resolve issues that arise as number portability is deployed within each number portability region. Such issues include, but are not limited to, ensuring that the local number portability administrators operate impartially, and achieving national uniformity and interoperability in number portability administration. In our view, such ongoing work of the NANC, especially during the early phases of deployment, will provide invaluable assistance to the Commission in ensuring timely implementation of number portability. Although the Commission retains ultimate authority over number portability matters, carriers that are not satisfied with a decision of an LLC or local number portability administrator regarding the administration of number portability, and cannot obtain relief from either of those entities, may bring their concerns before the NANC.

53. The Commission strongly encourages all parties to attempt to resolve issues regarding number portability deployment among themselves and, if necessary, under the auspices of the NANC. If any party objects to the NANC's proposed resolution, the NANC shall submit its proposed resolution of the disputed issue to the Commission as a recommendation for Commission review. In light of the parties' record of successful cooperation to implement number portability, we believe that this approach will enable the parties to resolve such issues most efficiently and effectively. Such issues may include, but are not limited to, amendments to or interpretations of the NANC's recommendations approved in this order, disputes regarding the LLCs' oversight and management of the number portability database administrators, or any other matter involving the administration of local number portability. In the interest of expediting this process, the Commission hereby establishes the following procedures to govern NANC recommendations submitted for Commission review:

(1) Following the adoption of a recommendation regarding the administration of number portability,

the NANC shall issue a written report summarizing the positions of the parties and the basis for the recommendation adopted by the NANC. The NANC Chair will transmit the written report of such recommendation to the Chief of the Common Carrier Bureau (Chief). The Chief will issue a public notice describing the report and provide a reasonable opportunity for interested parties to comment on the NANC's recommendation. Recommendations adopted by the NANC and forwarded to the Commission may be implemented by the parties pending Commission review.

(2) Within 90 days of the conclusion of the comment cycle established by the Chief of the Common Carrier Bureau for review of a NANC recommendation, the Chief, after consultation with the Chief of the Wireless Telecommunications Bureau, may issue an order adopting, modifying or rejecting the recommendation. If the Chief does not act within 90 days of the conclusion of the comment cycle, the recommendation will be deemed to have been adopted by the Bureau.

54. We reject USTA's request that we establish direct appeal provisions for carriers that wish to contest the decisions of the LLCs or the local number portability administrators regarding the administration of number portability. As stated above, most of the commenting parties agree that the LLCs and local number portability administrators have worked efficiently and fairly to implement local number portability, and none of the commenting parties identifies with precision any future circumstances in which the LLCs and local number portability administrators would fail to work efficiently and fairly. Moreover, by this order, the Commission establishes a procedure through which aggrieved parties may have their concerns addressed in the LLCs' own dispute resolution process, by the NANC, and ultimately by the Commission. Given the success of carriers and the local number portability administrators in resolving difficult implementation issues, as well as the availability of the NANC to recommend resolutions of matters brought before it to the Commission, we decline to establish special provisions for bringing such matters before state or federal regulators.

55. *Implementation Oversight Committee.* We also adopt the NANC's recommendation that the Commission create a committee to monitor number portability deployment in the top 100 MSAs. We agree with the NANC that such monitoring will be especially important during the initial phase of number portability deployment, as this initial phase will involve more extensive testing and will lay the groundwork for successful deployment in later phases. Consequently, we are creating a committee, comprised of members of the NANC's Local Number Portability Working Group, representing a broad cross-section of the telecommunications industry, and chaired by the Chief of the Common Carrier Bureau, to monitor compliance with the Commission's orders during deployment of number portability in the top 100 MSAs. This committee will not provide advice or recommendations to the Commission, but will gather information to monitor number portability deployment in the top 100 MSAs.

Final Regulatory Flexibility Analysis

56. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking* in this docket (*NPRM*). The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received on the IRFA were discussed in the *First Report & Order's* Final Regulatory Flexibility Analysis (FRFA-First Report & Order), which was incorporated as Appendix C to the *First Report & Order* in this docket. The FRFA-First Report & Order conforms to the RFA. 5 U.S.C. 604. On reconsideration of the *First Report & Order*, parties commented on the FRFA-First Report & Order. The comments received on the FRFA-First Report & Order were discussed in the Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) incorporated into the *First Order on Reconsideration* in this docket. The Supplemental FRFA conforms to the RFA. 5 U.S.C. 604. The Final Regulatory Flexibility Analysis (FRFA-Second Report & Order) is incorporated as an appendix to the *Second Report & Order* in this docket, in which the Commission adopts, to the extent described therein, the recommendations of the North American Numbering Council (NANC) regarding the implementation of local number portability. The *First Report & Order* directed the NANC to make these recommendations and forward them to the Commission, which then requested public comment on the recommendations. The FRFA-Second Report & Order also conforms to the RFA. 5 U.S.C. 604.

A. Need for and Objectives of Second Report and Order

57. The need for and objectives of the requirements adopted in the *Second Report and Order* are the same as those discussed in the Final Regulatory Flexibility Analysis in the *First Report & Order.* The Commission, in compliance with sections 251(b)(2) and 251(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act), adopts requirements and procedures intended to ensure the prompt implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. These requirements are necessary to implement the provision in the 1996 Act requiring local exchange carriers (LECs) to offer number portability, if technically feasible. In implementing the statute, the Commission has the responsibility to adopt requirements that will implement most quickly and effectively the national telecommunications policy embodied in the 1996 Act and to promote the pro-competitive, deregulatory markets envisioned by Congress. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace. Specifically, we adopt the recommendations of the NANC regarding the selection of local number portability administrators, the location of regional databases, the overall national architecture and technical specifications for the regional databases, and the duties of local number portability administrators in administering the number portability regional databases.

B. Summary of Significant Issues Raised By Public Comments in Response to the IRFA, FRFA-First Report & Order and Supplemental FRFA

58. The comments received on the IRFA were discussed in the FRFA-First Report & Order incorporated into the *First Report & Order.* The comments received on the FRFA-First Report & Order were discussed in the Supplemental FRFA incorporated into the *First Order on Reconsideration.* No additional comments were sought or received for purposes of the FRFA-Second Report & Order.

C. Summary of the FRFA-First Report & Order

59. In the FRFA-First Report & Order, we concluded that incumbent LECs do not qualify as small businesses because they are dominant in their field of

operation, and, accordingly, we did not address the impact of our requirements on incumbent LECs. We noted that the RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act. 15 U.S.C. 632. A small business concern is one that (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). According to the SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern. 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

60. We did recognize that our requirements may have a significant economic impact on a substantial number of small businesses insofar as they apply to telecommunications carriers other than incumbent LECs, including competitive LECs, as well as cellular, broadband personal communications services (PCS), and covered specialized mobile radio (SMR) providers. Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, we estimated that 2,100 carriers could be affected. We also discussed the reporting requirements imposed by the *First Report & Order.*

61. Finally, we discussed the steps we had taken to minimize the impact on small entities, consistent with our stated objectives. We concluded that our actions in the *First Report & Order* would benefit small entities by facilitating their entry into the local exchange market. We found that the record in this proceeding indicated that the lack of number portability would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. These competitive providers, many of which may be small entities, may find it easier to enter the market as a result of number portability, which will eliminate this barrier to entry. We noted that, in general, we attempted to keep burdens on local exchange carriers to a minimum. For example, we adopted a phased deployment schedule for implementation in the 100 largest MSAs, and then elsewhere upon a carrier's request; we conditioned the provision of currently available measures upon request only; we did not require cellular, broadband PCS, and covered SMR providers, which may be small businesses, to offer currently available number portability measures; and we did not require paging and messaging service providers, which may be small entities, to provide any number portability.

D. Summary of the Supplemental FRFA

62. *Implementation Schedule.* In the *First Report & Order,* we required local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability, according to a phased deployment schedule commencing on October 1, 1997, and concluding by December 31, 1998, set forth in Appendix F of the *First Report & Order.* In the *First Order on Reconsideration,* we extended the end dates for Phase I of our deployment schedule by three months, and for Phase II by 45 days. Thus, deployment will now take place in Phase I from October 1, 1997, through March 31, 1998, and in Phase II from January 1, 1998, through May 15, 1998. We also clarified that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. LECs must make available lists of their switches for which deployment has and has not been requested. The parties involved in such requests identifying preferred switches may need to use legal, accounting, economic and/or engineering services.

63. In the *First Order on Reconsideration,* we reduced the burdens on rural and smaller LECs by establishing a procedure whereby, within as well as outside the 100 largest MSAs, portability need only be implemented in the switches for which another carrier has made a specific request for the provision of portability. If competition is not imminent in the areas covered by rural/small LEC switches, then the rural or smaller LEC should not receive requests from competing carriers to implement portability, and thus need not expend its resources until competition does develop. By that time, extensive non-carrier-specific testing will likely have been done, and rural and small LECs need not expend their resources on such testing. We noted that the majority of parties representing small or rural LECs specified as the relief sought that we only impose implementation requirements where competing carriers have shown interest in portability. Moreover, our extension of Phases I and II of our deployment schedule may permit smaller LECs to reduce their testing costs by allowing time for larger LECs to test and resolve the problems of this new technology.

64. In the *First Order on Reconsideration,* we rejected several alternatives put forth by parties that might impose greater burdens on small entities and small incumbent LECs. We rejected requests to accelerate the deployment schedule for areas both within and outside the 100 largest MSAs. We also rejected the procedures proposed by some parties that would require LECs to file waiver requests for their specific switches if they believe there is no competitive interest in those switches, instead of requiring LECs to identify in which switches of other LECs they wish portability capabilities. The suggested waiver procedures would burden the LEC from whom portability is requested with preparing and filing the petition for waiver. In addition, a competing carrier that opposes the waiver petition would be burdened with challenging the waiver. In contrast, under the procedure we establish, the only reporting burden on requesting carriers is to identify and request their preferred switches. Carriers from which portability is being requested, which may be small incumbent LECs, only incur a reporting burden if they wish to lessen their burdens further by requesting more time in which to deploy portability. Finally, we clarified that CMRS providers, like wireline providers, need only provide portability in requested switches, both within and outside the 100 largest MSAs.

E. Description and Estimates of the Number of Small Entities Affected by the Second Report and Order

65. For the purposes of the *Second Report and Order,* the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3). Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. 15 U.S.C. 632. SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities with fewer than 1,500 employees. 13 CFR 121.201.

66. The requirements adopted in the *Second Report and Order* governing regional databases to be utilized for long-term number portability apply to all LECs, including incumbent LECs as well as new LEC entrants, and also

apply to interexchange carriers, cellular, broadband PCS, and covered SMR providers. According to the SBA definition, incumbent LECs do not qualify as small businesses because they are dominant in their field of operation. Accordingly, we will not address the impact of these requirements on incumbent LECs.

67. Our actions in the *Second Report & Order* will generally benefit small entities by facilitating their entry into the local exchange market. The record in this proceeding indicates that the lack of number portability would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. The *Second Report and Order* adopts the technical and operational standards and procedures needed to implement local number portability. Competitive providers, many of which may be small entities, may find it easier to enter the market as a result of number portability, which will eliminate this barrier to entry. We note that, in general, we attempted to keep burdens on local exchange carriers to a minimum.

68. Our requirements, however, may have a significant economic impact on a substantial number of small businesses insofar as they apply to telecommunications carriers other than incumbent LECs. In particular, the requirements may have such an impact upon new entrant LECs, as well as cellular, broadband PCS, and covered SMR providers. These impacts are discussed further below.

69. *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, cellular carriers, mobile service carriers, broadband PCS providers, and covered SMR providers. 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.'' 15 U.S.C. 632(a)(1). 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 tentatively conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent local exchange carriers.

i. Common Carrier Services and Related Entities

70. 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.

71. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. 13 CFR 121.201; SIC Code 4812. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small 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.

72. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. 13 CFR 121.201; SIC Code 4813. 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 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.

73. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies. 13 CFR 121.201; SIC 4813. The most reliable source of information regarding the number of IXCs nationwide is the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services. We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs.

ii. Wireless and Commercial Mobile Services

74. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. 13 CFR 121.201; SIC Code 4812. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small

entity radiotelephone companies that may be affected by the decisions and requirements adopted in the *Second Report and Order.*

75. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The closest applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular services carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet.* According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular services carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small cellular service carriers.

76. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully; therefore, there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

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

78. The Commission's auctions for geographic area licenses in the 900 MHz SMR band concluded in April of 1996. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the requirements adopted in the *Second Report and Order* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of the FRFA-Second Report & Order, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in the *Second Report and Order.*

F. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

79. There are several reporting requirements imposed by the *Second Report and Order* that are likely to require the services of persons with technical expertise to prepare the reports. Most of these reporting requirements, however, are imposed on the NANC, a federal advisory committee, as opposed to a ''small entity'' within the meaning of the RFA. 5 U.S.C. 601(3); Small Business Act, 15 U.S.C. 632; 5 U.S.C. 601(5). In particular, the Commission directs the NANC to present its recommendation regarding the provision of number portability by wireless carriers within nine months of the release of the *Second Report and Order.* Further, the NANC is directed to review the request of Cincinnati Bell Telephone that it be allowed to select one of the regional number portability databases for purposes of fulfilling its number portability responsibilities and to make a recommendation to the Commission by December 15, 1997. Moreover, as part of its general oversight of the local number portability administrators, the NANC is directed to submit recommendations concerning local number portability to the Commission from time to time. Following the adoption of a recommendation regarding the administration of number portability, the NANC is directed to issue a written report to the Commission summarizing the positions of the parties and the basis for the recommendation adopted by the NANC. In addition, pursuant to the *Second Report & Order,* each U.S. territory (*i.e.*, Puerto Rico, U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands) is directed to: (1) select a regional database that carriers in that territory will use to provide number portability; and (2) notify the Commission and the NANC in writing regarding this selection within 45 days of the release of the *Second Report and Order.* There are no significant reporting, recordkeeping or other compliance requirements imposed by the *Second Report and Order* on other entities.

G. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

80. The Commission's actions in the *Second Report and Order* will benefit small entities by facilitating their entry into the local exchange market. The record in this proceeding indicates that the lack of number portability would

deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. These competitive providers, many of which may be small entities, may find it easier to enter the market as a result of number portability which will eliminate this barrier to entry.

81. In general in this docket, we have attempted to keep burdens on local exchange carriers to a minimum. The regulatory burdens we have imposed are necessary to ensure that the public receives the benefit of the expeditious provision of service provider number portability in accordance with the statutory requirements. We believe that the *Second Report & Order* furthers our commitment to minimizing regulatory burdens on small entities. For example, the NANC had recommended that we allow LECs to block calls whenever a carrier transmitting a call to a terminating LEC fails to query the number portability database to determine if a number has been ported. This recommendation would have required carriers transmitting calls to terminating LECs to reconfigure their networks to perform database queries or to pay another entity to perform a database query on their behalf. Permitting LECs to block unqueried calls could have negatively affected CMRS providers, who are not required to query calls or make arrangements to do so until December 31, 1998. We, therefore, only allow terminating LECs to block calls, when failure to do so is likely to impair network reliability. The volume of calls transferred to terminating LECs by small entities is unlikely to reach a level that could impair network reliability. As a result, terminating LECs are unlikely to block calls handled by small entities. Furthermore, carriers can make arrangements with other entities to perform database queries on their behalf. Based on the record before us, we do not find that any of the recommendations we adopt in the *Second Report & Order* will have a disproportionate impact on small entities.

82. *Report to Congress:* The Commission will send a copy of the *Second Report & Order*, including the FRFA-Second Report & Order, in a report to be sent to Congress pursuant to the Small Business Regulatory Fairness Act of 1996. 5 U.S.C. 801(a)(1)(A). A copy of the *Second Report & Order* and the FRFA-Second Report & Order (or summary thereof) will also be published in the **Federal Register** and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

83. Accordingly, it is ordered that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 218, 251, and 332 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 251 and 332, part 52 of the Commission's Rules, 47 CFR part 52, is amended as set forth below.

84. It is further ordered that the policies, rules and requirements set forth in the *Second Report and Order* are adopted, effective October 17, 1997.

85. It is further ordered that the Secretary shall send a copy of the *Second Report and Order*, including the final regulatory flexibility certification set forth in Appendix C, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 47 CFR Part 52

Communications common carriers, Incorporation by reference, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 52 of title 47 of the Code of Federal Regulations is amended as follows:

PART 52—NUMBERING

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

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 271 and 332 unless otherwise noted.

2. A new Section 52.26 is added to read as follows:

§ 52.26 NANC Recommendations on Local Number Portability Administration.

(a) Local number portability administration shall comply with the recommendations of the North American Numbering Council (NANC) as set forth in the report to the Commission prepared by the NANC's Local Number Portability Administration Selection Working Group, dated April 25, 1997 (*Working Group Report*) and its appendices, which are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. *Except that:* Section 7.10 of Appendix D of the *Working Group Report* is *not* incorporated herein.

(b) In addition to the requirements set forth in the *Working Group Report*, the following requirements are established:

(1) If a telecommunications carrier transmits a telephone call to a local exchange carrier's switch that contains any ported numbers, and the telecommunications carrier has failed to perform a database query to determine if the telephone number has been ported to another local exchange carrier, the local exchange carrier may block the unqueried call only if performing the database query is likely to impair network reliability;

(2) The regional limited liability companies (LLCs), already established by telecommunications carriers in each of the original Bell Operating Company regions, shall manage and oversee the local number portability administrators, subject to review by the NANC, but only on an interim basis, until the conclusion of a rulemaking to examine the issue of local number portability administrator oversight and management and the question of whether the LLCs should continue to act in this capacity; and

(3) The NANC shall provide ongoing oversight of number portability administration, including oversight of the regional LLCs, subject to Commission review. Parties shall attempt to resolve issues regarding number portability deployment among themselves and, if necessary, under the auspices of the NANC. If any party objects to the NANC's proposed resolution, the NANC shall issue a written report summarizing the positions of the parties and the basis for the recommendation adopted by the NANC. The NANC Chair shall submit its proposed resolution of the disputed issue to the Chief of the Common Carrier Bureau as a recommendation for Commission review. The Chief of the Common Carrier Bureau will place the NANC's proposed resolution on public notice. Recommendations adopted by the NANC and forwarded to the Bureau may be implemented by the parties pending review of the recommendation. Within 90 days of the conclusion of the comment cycle, the Chief of the Common Carrier Bureau may issue an order adopting, modifying or rejecting the recommendation. If the Chief does not act within 90 days of the conclusion of the comment cycle, the recommendation will be deemed to have been adopted by the Bureau.

(c) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the *Working Group Report* and its

appendices can be obtained from the Commission's contract copier, International Transcription Service, Inc., 1231 20th St., N.W., Washington, D.C. 20036, and can be inspected during normal business hours at the following locations: 1919 M Street, N.W., Room 239 (FCC Reference Center), Washington, D.C. 20554 or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. The *Working Group Report* and its appendices are also available on the Internet at http://www.fcc.gov/ccb/Nanc/.

[FR Doc. 97–24426 Filed 9–16–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 94–129; FCC 97–248]

Unauthorized Changes of Consumer's Long Distance Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communication Commission published in the **Federal Register** of August 14, 1997, a document which amends the Commission's rules and policies governing the unauthorized switching of subscribers' primary interexchange carriers (PICs), an activity more commonly known as ''slamming.'' In the Order on Reconsideration, the Commission disposes of six petitions for reconsideration of its *1995 Report and Order,* and amends its rules regarding changes in subscribers' long distance carriers in three respects. The Commission's decision is intended to deter and ultimately eliminate unauthorized changes in subscribers' long distance carriers. Inadvertently § 64.1100(a) had the word ''or'' omitted. This document adds the word ''or''.

EFFECTIVE DATE: January 12, 1998.

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

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of August 14, 1997, FCC 97–248 (62 FR 43477) FR Doc. No. 97–21527. The amended § 64.1100(a) inadvertently had the word ''or'' omitted. This correction adds the word ''or'' to the amended § 64.1100(a).

§ 64.1100 [Corrected]

On page 43481, in the second column, in § 64.1100(a), last line, add the word ''or'' after the semicolon.

Dated: September 11, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–24646 Filed 9–16–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92–297; FCC 97–323]

The Local Multipoint Distribution Service (''LMDS'')

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on reconsideration

SUMMARY: On September 9, 1997, the Federal Communications Commission adopted a *Second Order on Reconsideration* amending certain rules pertaining to Local Multipoint Distribution Service (''LMDS'') operations in the 27.5–28.35 GHz, 29.1–29.25 GHz, and 31.0–31.3 GHz bands. These amendments are being made in response to certain petitions for reconsideration of the *Second Report and Order* in this proceeding which established rules and policies for LMDS. The effect of this action is to make amendments to the rules regarding favorable small business provisions available to qualifying applicants for LMDS licenses.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Matthew Moses, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Order on Reconsideration* in CC Docket No. 92–297, FCC 97–323. The complete *Second Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036. The complete Second Order on Reconsideration is also available on the Commission's Internet home page (http://www.fcc.gov).

SUMMARY of THE SECOND ORDER on RECONSIDERATION

1. The Commission has before it several petitions for reconsideration of the *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking in this proceeding. Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules To Redesignate the 27.5–29.5 GHz Frequency Band, To Reallocate the 29.5–30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Petitions for Reconsideration of the Denial of Applications for Waiver of the Commission's Common Carrier Point-to-Point Microwave Radio Service Rules,* CC Docket No. 92–297, *Suite 12 Group Petition for Pioneer Preference,* PP–22, *Second Report and Order, Order on Reconsideration,* 62 FR 23148 (April 29, 1997), and *Fifth Notice of Proposed Rulemaking,* 62 FR 16514 (April 7, 1997) (''*LMDS Second Report and Order*'') (''*Fifth Notice of Proposed Rulemaking*'') (''*Order on Reconsideration*''), adopting subpart L of part 101 of the Commission's rules, 47 CFR 101.1001–1112; *appeal pending sub nom. Melcher* v. *FCC,* Case Nos. 93–1110, et al. (D.C. Cir., filed February 8, 1993) (eligibility restrictions); *Errata* (released April 7 and May 1, 1997); *Order on Reconsideration,* 62 FR 28373 (May 23, 1997). The Commission defers the comments and all matters raised for comment in the *Fifth Notice of Proposed Rulemaking* to a separate Report and Order to be issued in the near future. CellularVision USA, Inc. (''CellularVision''), WebCel Communications, Inc. (''WebCel''), Cook Inlet Region, Inc. (''Cook Inlet''), LBC Communications, Inc. (''LBC''), the Rural Telecommunications Group (''RTG''), the Independent Alliance, and Sierra Digital Communications, Inc. filed petitions for reconsideration of the *LMDS Second Report and Order.* LDH International, Inc., Celltel Communications Corporation, and CT Communications Corporation jointly filed a petition for reconsideration of the *Order on Reconsideration,* and M3 Illinois Telecommunications Corporation filed a petition for review of the *Order on Reconsideration.* This *Second Order on Reconsideration* addresses those portions of the petitions of CellularVision, WebCel, and Cook Inlet that deal with the participation of small businesses in the upcoming auction of LMDS licenses.

2. In authorizing the Commission to use competitive bidding, Congress mandated that the Commission ''ensure that small businesses, rural telephone

companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' Section 309(j)(4)(D) of the Communications Act of 1934, as amended (''Communications Act''), 47 U.S.C. 309(j)(4)(D). These categories are collectively known as ''designated entities.'' Noting the lack of a record to support special provisions for businesses owned by members of minority groups and women, the Commission adopted provisions for small businesses in the belief that they would also assist minority-and women-owned entities, many of which are small businesses. For the reasons set forth below, the Commission reconsiders and modifies certain rules affecting small business participation in the LMDS license auction. Specifically, the Commission:

- Eliminates installment payments for LMDS licensees in favor of revised, tiered bidding credits for very small, small, and entrepreneurial businesses participating in this auction;
- Denies a request to adopt an ''asset test'' for evaluating business size; and
- Declines to further address the qualifications of licensees that are delinquent or in default on FCC licenses in other services for obtaining favorable provisions for this auction.

Those portions of the aforementioned petitions that do not deal with the small business participation rules will be addressed in a separate Commission ruling.

3. In the *LMDS Second Report and Order*, the Commission adopted service and competitive bidding rules for LMDS which included, *inter alia*, provisions designed to assist two distinct sizes of small businesses and entities. Entities with average gross revenues for the preceding three years of more than $40 million but not more than $75 million hereinafter are referred to as ''entrepreneurs.'' The Commission notes that this is the first time in the LMDS proceeding in which the term ''entrepreneurs'' has been used to refer to entities with average gross revenues for the preceding three years of more than $40 million but not more than $75 million. A small business is defined as ''an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $40 million.'' For entrepreneurs, the Commission made available 15 percent bidding credits and installment payments at the same interest rate as for small businesses. Installment payments for entrepreneurs consist of both interest and principal amortized over the ten years of the license term. Small businesses are eligible for 25 percent bidding credits and installment payments, the interest rate for which is based on the rate for ten-year U.S. Treasury obligations, fixed at the time of licensing, plus 2.5 percent. Installment payments for small businesses consist of interest-only payments for the first two years, and interest and principal amortized over the remaining eight years of the license term.

4. CellularVision, WebCel, and Cook Inlet request that the Commission reconsider certain aspects of the small business provisions established in the *LMDS Second Report and Order*. These petitioners also variously seek reconsideration of other aspects of the LMDS rules, but this proceeding addresses only their designated entity proposals. Zip Communications Corporation (''Zip''), RTG, and CellularVision filed oppositions to various portions of these petitions. Bell Atlantic Corporation also opposes the WebCel Petition, which it characterizes as an ''effort to suppress bidding competition,'' but does not specifically address WebCel's arguments regarding designated entity provisions. WebCel and CellularVision also replied to some of the oppositions. Finally, the Commission received *ex parte* communications from the National Venture Capital Association (''NVCA''), U.S. WaveLink Telecommunications Group, L.P. (''U.S. WaveLink''), WebCel, CellularVision, and LBC. Petitions for judicial stay of the *LMDS Second Report and Order* have also been filed. Those cases have since been consolidated in the U.S. Court of Appeals for the District of Columbia in *Melcher* v. *FCC*.

I. Commencement of the Auction

5. *Petitions*. U.S. WaveLink urges the Commission to announce that the LMDS auction will begin no later than November, 1997, believing expedition imperative to ensure sound business planning. U.S. WaveLink asserts that the LMDS auction is already long overdue, that capital markets have been poised to invest, and that further delay will dampen investors' interest, slow the delivery of innovative video programming and telecommunications services to the public, and irreparably harm competition in LMDS and in the video programming and telecommunications markets in which LMDS licensees seek to compete. U.S. WaveLink notes that it has already been several months since the Commission last directed the Wireless Telecommunications Bureau to implement procedures for auctioning LMDS licenses pursuant to the *LMDS Second Report and Order*, and that it has been more than four years since the Commission first proposed to authorize LMDS operation and almost a year since the Commission designated spectrum for LMDS use. Zip also urges the Commission to commence the LMDS auction as expeditiously as possible.

6. *Discussion*. The Commission agrees with U.S. WaveLink and Zip regarding the need to move expeditiously to auction the LMDS licenses. The Commission believes that the public will significantly benefit from the availability of new services via LMDS and from the benefits of competition between LMDS and established services. The Commission is concerned that further delay may slow the delivery of new services to the public and harm the growth of competition. The Commission also wants to give sufficient time from the date of the release of this *Second Order on Reconsideration* for potential bidders to arrange financing. Therefore, the Commission has recently announced that the LMDS auction will begin on December 10, 1997. This issue is therefore moot.

II. Installment Payments

7. *Petitions*. Cook Inlet urges us to eliminate the installment payment plans for LMDS licensees. Cook Inlet asserts that installment payment plans fueled speculation in the broadband Personal Communications Services (''PCS'') auctions, encouraged expectations of Commission relief from payment obligations, and saddled the Commission with difficult credit-related tasks for which it has no experience. Cook Inlet Petition also notes the Commission's statement in the current proceeding to modify its general competitive bidding rules:

> We note that substituting a system of larger bidding credits might eliminate the administrative and market concerns associated with installment payments, while nonetheless ensuring opportunities for small businesses to participate in auctions.

Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, WT Docket No. 97–82, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997), at ¶ 34 (''*Part 1 Order and NPRM*''). Cook Inlet further argues that installment payment programs force the Commission to balance its duty to regulate the provision of wireless services with its sometimes conflicting obligation to manage the federal debt responsibly. To ensure that small businesses have the opportunity to compete for LMDS licenses, Cook Inlet urges the Commission to offer increased

bidding credits in place of installment payment plans, which it asserts will allow responsible small bidders with appropriately tailored business plans to secure private financing, without sacrificing market driven bidding discipline.

8. CellularVision, WebCel, Zip and LBC oppose Cook Inlet's proposal to eliminate installment payment plans for LMDS licensees. CellularVision and WebCel argue that section 309(j)(4) of the Communications Act requires the Commission to consider the use of installment payments as a means of ensuring that licenses are held by a wide variety of applicants, including small businesses. WebCel further argues that installment payments were successful in past auctions, and that in this proceeding the Commission lacks the requisite degree of justification to eliminate them, citing 47 U.S.C. 309(j)(4)(A) and (D), the Administrative Procedures Act, generally, and *Motor Vehicle Manufacturers Ass'n* v. *State Farm Mutual Ins. Co.,* 463 U.S. 29 (1983) (''*Motor Vehicle Manufacturers*''). CellularVision, WebCel and LBC also express doubts that private financing will be available or sufficient for participation in the LMDS auction and subsequent build-out, marketing and operations. Zip agrees with Cook Inlet that its proposal would curb speculative bidding, but also believes that it would eliminate any meaningful opportunity for small businesses to participate in the LMDS auction. If the Commission does eliminate installment payments for LMDS licensees, CellularVision proposes that small businesses, as currently defined, receive a 50 percent bidding credit in order to attract the necessary private financing to compete in the LMDS auction.

9. Contrary to Cook Inlet's proposal, CellularVision asserts that an additional, ''deferred incremental repayment'' installment payment option, that takes into account the special resource-intensive characteristics of LMDS, is necessary to ensure maximum small business participation in the LMDS auction. Under CellularVision's proposal, payments of interest, at a rate equal to a 10-year U.S. Treasury note, would commence in year six, while payments of principal would commence in year seven under an incremental structure of five percent in year seven, 10 percent in years eight and nine, and the remaining 75 percent in the final year. WebCel, for its part, suggests the creation of two additional ''very small'' business categories which would include proportionally favorable installment payment plans. Zip opposes CellularVision's proposal, asserting that the elimination of any immediate financial obligation would give bidders an incentive to engage in speculation, and that it may encourage bidders to drive prices beyond the range of small businesses, with the expectation that the Commission will forgive the winners' debt obligations if they later find that they have overreached. CellularVision asserts in reply that the auction process itself virtually eliminates the possibility of speculation.

10. *Discussion*. The Commission grants Cook Inlet's petition and eliminates installment payment plans for LMDS licensees. Notwithstanding the arguments of CellularVision and WebCel, Congress did not require the use of installment payments in all auctions, but rather recognized them as one means of promoting the objectives of section 309(j)(3) of the Communications Act. Section 309(j)(4) of the Communications Act states that the Commission shall, in prescribing regulations pursuant to these objectives and others, ''*consider* alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B) * * * .'' 47 U.S.C. 309(j)(4)(A) (emphasis added). The legislative history of section 309(j) of the Communications Act indicates that:

> While it is clear that, in many instances, the objectives of section 309(j) will be best served by a traditional, ''cash-on-the-barrelhead'' auction, it is important that the Commission employ different methodologies as appropriate. Under this subsection, the Commission has the flexibility to utilize any combination of techniques that would serve the public interest.

Omnibus Budget Reconciliation Act of 1993, Report of the Committee on the Budget, House of Representatives, to Accompany H.R. 2264, A Bill to Provide for Reconciliation Pursuant to section 7 of the Concurrent Resolution of the Budget for Fiscal Year 1994, May 25, 1993, at p. 255. The Commission continues to experiment with different means for achieving its obligations under the statute, and has offered installment payments to licensees in several auctioned wireless services. By no means, however, has Congress dictated that installment payments are the only tool in assisting small business. Indeed, the Commission has conducted several auctions without installment payments. Moreover, in recent legislation, Congress dictated that certain future auctions effectively be conducted without installment payments. Section 3001 of the Omnibus Consolidated Appropriations Act for 1997, Public Law 104–208, 110 Stat. 3009 (1996) (''Omnibus Consolidated Appropriations Act'') is one example. Another example is the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997). Section 3007 of the Balanced Budget Act of 1997, which significantly amends section 309(j) of the Communications Act, requires that:

> The Commission shall conduct the competitive bidding required under this title or the amendments made by this title in a manner that ensures that all proceeds of such bidding are deposited in accordance with section 309(j)(8) of the Communications Act of 1934 not later than September 30, 2002.

The Conference Report on the Balanced Budget Act of 1997 indicates that the deadline set forth in section 3007 ''applies to all competitive bidding provisions in this title of the conference agreement and any amendments to other law made in this title.'' Conference Report on H.R. 2015, Balanced Budget Act of 1997, Congressional Record—House, Vol. 143, No. 109—Part II, at H6176. The Commission has carefully considered the use of installment payment plans for LMDS licensees. The Commission concludes that it can meet its statutory obligations absent these provisions.

11. The Commission must balance competing objectives in section 309(j) that require that it promote the development and rapid deployment of new spectrum-based services and ensure that designated entities are given the opportunity to participate in the provision of such services. In assessing the public interest, the Commission must try to ensure that all the objectives of section 309(j) are considered. While the Commission disagrees with Cook Inlet's contention that installment payments necessarily encourage speculation, the Commission's experience with the installment payment program leads it to conclude that installment payments may not always serve the public interest. The Commission has found, for example, that obligating licensees to pay for their licenses as a condition of receipt requires greater financial accountability from applicants. *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band,* PR Docket No. 93–144, RM–8117, RM–8030, RM–8029, *Implementation of Section 3(n) and 322 of the Communications Act—Regulatory Treatment of Mobile Services,* GN Docket No. 93–252, *Implementation of*

Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Memorandum Opinion and Order,* 62 FR 41225 (July 31, 1997) *(''800 MHz MO&O'')* at ¶ 130. The Commission is presently examining issues relating to its administration of installment payments, including those raised by Cook Inlet, in several other proceedings. Because of the importance of these issues, the Commission plans to incorporate its decisions regarding installment payments for the broadband PCS C and F Blocks and other financial issues into its part 1 rulemaking. Nevertheless, the Commission agrees with U.S. WaveLink and Zip about the need to move expeditiously to auction the LMDS licenses. The Commission believes that the public interest is best served by going forward with the LMDS auction without extending installment payments to LMDS licensees. In place of installment payments, the Commission establishes other changes that will provide for the interests of new entrants.

12. The Commission disagrees with the contentions of WebCel, LBC, and Zip that installment payments are necessary to ensure a meaningful opportunity for small businesses to participate in LMDS. In other auctions in which installment payments were not available, small businesses were the high bidders on a significant number of licenses. In the Wireless Communications Service (''WCS'') auction, which had bidding credits of 25 percent for small businesses and 35 percent for very small businesses and no installment payments, 25 percent of the licenses went to small or very small businesses. In the cellular auction of licenses for unserved areas, which had no special bidding provisions, 36 percent of the licenses went to small or very small businesses. CellularVision, although expressing some doubts regarding the ability of small businesses to attract private financing, suggests that a large enough bidding credit would enable small businesses to do so, while Cook Inlet contends that increased bidding credits will allow responsible small bidders with appropriately tailored business plans to secure private financing. WebCel, Cook Inlet, and NVCA also point out, as discussed below, that LMDS may be built out incrementally, which may allow for lower levels of front-end system financing than other services. Further, as the Commission has already noted, section 309(j) requires it to consider alternative methods to allow for dissemination of licenses among designated entities, including small businesses. The Commission believes that the methods discussed below will both fulfill the mandate of section 309(j) to provide small business with the opportunity to participate in auctions and ensure that new services are offered to the public without delay.

13. Since the Commission has decided not to offer installment payments, it rejects as moot both CellularVision's proposed deferred incremental repayment and WebCel's suggestion of a favorable interest rate for very small businesses. The Commission further disagrees with WebCel that it lacks adequate justification to eliminate installment payment plans for LMDS licensees under the Administrative Procedures Act and *Motor Vehicle Manufacturers.* Section 706(2)(A) of the Administrative Procedures Act states that agency actions, findings, and conclusions shall be held unlawful and set aside if they are found to be ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law * * *.'' *Motor Vehicle Manufacturers* held that this standard is applicable to rescission or modification of rules. Under *Motor Vehicle Manufacturers* and other cases, an agency acts arbitrarily or capriciously if it fails to examine the relevant data and articulate a satisfactory explanation for its action including a ''rational connection between the facts found and the choices made.'' *Motor Vehicle Manufacturers,* 463 U.S. at 43, citing *Burlington Truck Lines* v. *United States,* 371 U.S. 156 (1962). *Motor Vehicle Manufacturers* also acknowledged that '' 'regulatory agencies do not establish rules of conduct to last forever,' * * * and that an agency must be given ample latitude to 'adapt their rules and policies to the demands of changing circumstances.' '' *Motor Vehicle Manufacturers,* 463 U.S. at 42 (citations omitted). The Commission has fully considered the issue based on its experience with installment payment plans and the record before it in this proceeding.

III. Very Small Business Category

14. *Petitions.* In place of the current installment payment plan, Cook Inlet requests the institution of a ''very small business'' category, featuring a 35 percent bidding credit, for entities that, together with affiliates and controlling principals, have average gross revenues for the preceding three years of not more than $15 million. Cook Inlet opines that while substantial capital will be necessary to acquire and construct LMDS systems, LMDS may provide better opportunities for smaller entities than did broadband PCS because LMDS operators will be able to build out systems incrementally without compromising their provision of service to end users. Cook Inlet notes the examples of wireless local loop or video offerings, in which it asserts that ''a smaller system may stand on its own on a more localized basis without the need for immediate 'total area' coverage or even national systems support.''

15. NVCA and WebCel also advocate very small business categories, although not in place of installment payments, arguing that the fixed nature of LMDS service allows cell sites and network infrastructure to be deployed incrementally to match revenue generation. Therefore, the initial capital-raising requirements for one or a few markets are not as formidable as services that require extensive buildout before they are put into service. NVCA also asserts that because the fixed nature of LMDS obviates the need for nationwide roaming and national branding, very small businesses can be successful with only one or a few licenses. NVCA characterizes LMDS as potentially ''one of the best new venture opportunities for locally-owned small businesses and entrepreneurial start-ups to enter the telecommunications industry.'' Both NVCA and WebCel express concern that without a very small business category, entrepreneurial entities with differentiated business plans and adequate venture financing, who would otherwise succeed in building local LMDS businesses, will be outbid by much larger entities that currently qualify for the same provisions. WebCel consequently requests the adoption of a very small business category for entities with average gross revenues for the three preceding years of not more than $15 million, and an additional very small business category for entities with average gross revenues for the three preceding years of not more than $3 million, and seeks advantageous installment payment rates and bidding credits for these categories. RTG concurs with parties advocating inclusion of a very small business category in the LMDS auction, asserting that LMDS is capital-intensive and that small businesses will not be able to afford licenses or effectively deploy their systems without additional incentives.

16. CellularVision opposes implementation of WebCel's plan if it would reduce current incentives for small businesses or entrepreneurs, believing that any incentives granted for very small businesses must be in addition to the current bidding credits and installment payment plans for those entities. Zip also opposes WebCel's

proposal for a very small business category, without elaboration.

17. *Discussion.* The Commission will create an additional category to benefit ''very small'' businesses bidding for LMDS licenses, along the lines suggested by Cook Inlet, NVCA, WebCel, and RTG. The Commission agrees that a unique category for very small businesses will serve as an effective method of leveling the competitive imbalance between very small businesses and other entrepreneurial entities. The Commission will define ''very small'' businesses as entities that, together with controlling principals and affiliates, have average gross revenues for the three preceding years of not more than $15 million. The Commission will also re-define ''small'' businesses as entities that, together with controlling principals and affiliates, have average gross revenues for the three preceding years of more than $15 million but not more than $40 million. These categories are identical to those adopted for the broadband PCS F Block auction, as petitioners argue. The Commission will apply to the very small business category the same attribution, control, consortia, upfront payment, and unjust enrichment rules that it adopted for its small business and entrepreneur categories.

18. The Commission declines to adopt WebCel's suggestion of another category for entities that, together with controlling principals and affiliates, have average gross revenues for the three preceding years of not more than $3 million. Under the revised ''tiered'' approach, the Commission will have three categories of bidders: ''entrepreneurs,'' ''small businesses,'' and ''very small businesses.'' Creating an additional category (*i.e.*, ''very, very small'' businesses) adds another layer of complexity with little countervailing benefit to bidders. The Commission believes that the three categories will adequately serve to diversify opportunity in its LMDS auction.

IV. Bidding Credits

19. *Petitions.* As previously described, Cook Inlet supports heightened bidding credits in lieu of installment payment plans for LMDS licenses. Specifically, Cook Inlet suggests the establishment of the aforementioned very small business category with a 35 percent bidding credit, and the retention of a 25 percent bidding credit for small businesses and a 15 percent bidding credit for entrepreneurs. Cook Inlet asserts that ''increased bidding credits such as these'' are appropriate in the absence of installment payment plans. To the extent that installment payments are no longer available for LMDS licensees, CellularVision proposes a 50 percent bidding credit for small businesses, as currently defined, in order to attract the necessary private financing to compete in the LMDS auction. WebCel requests that the Commission offer either a bidding credit of 35 percent for its two very small business categories, or adopt the tiered scheme employed for the broadband PCS F Block auction—a 25 percent bidding credit for very small businesses, a 15 percent bidding credit for small businesses, and no bidding credit for entrepreneurs.

20. *Discussion.* The Commission will offer higher bidding credits than those adopted in the *LMDS Second Report and Order* for small businesses and entrepreneurs. The Commission agrees with Cook Inlet and CellularVision that heightened bidding credits are appropriate in the absence of installment payment plans. Also, contrary to WebCel's assertions, the Commission believes that heightened bidding credits will fulfill the mandate of section 309(j)(4)(D) of the Communications Act to provide small businesses with the opportunity to participate in spectrum-based services. As noted above, this approach was successful in enabling small businesses to participate in the WCS auction, in which the Commission was unable to employ installment payments because of the statutory deadline for depositing auction revenues in the U.S. Treasury. The Commission also recently used this approach in establishing rules for the auction of licenses for 800 MHz Specialized Mobile Radio (''SMR''). However, the Commission does not agree with the bidding credit levels suggested by the petitioners. Except for entities that would qualify as very small businesses, Cook Inlet's proposed levels would not account for the loss of installment payment plans. WebCel's alternative suggestion of conforming the LMDS bidding credit levels to those employed in the broadband PCS F Block auction would entail reducing the bidding credits available to small businesses and entrepreneurs at the same time that the Commission is eliminating installment payments. CellularVision has not provided any support for its assertion that small businesses will require a 50 percent bidding credit to attract private financing.

21. The Commission will raise the bidding credit available to small businesses (entities with average gross revenues for the three preceding years of more than $15 million but not more than $40 million) to 35 percent and the bidding credit available to entrepreneurs (entities with average gross revenues for the preceding three years of more than $40 million but not more than $75 million) to 25 percent. These levels reflect the thresholds adopted in the *LMDS Second Report and Order,* with a reasonable adjustment of ten percent for the unavailability of installment payment plans for LMDS licensees. In addition, the Commission will adopt a 45 percent bidding credit for very small businesses (entities with average gross revenues for the three preceding years of not more than $15 million) in the LMDS auction. This level reflects the 35 percent threshold requested by WebCel, plus a reasonable adjustment for the lack of bidding credits. The Commission notes that it is difficult to accurately calculate the net present value of an installment payment plan (which value would depend on several variables, including future commercial interest rates), and the Commission does not in any event commit to an exact accommodation or reimbursement of the value of installment payments. Nor does the Commission intend to exactly match its small business provisions for LMDS to those employed in other services such as WCS or 800 MHz SMR. The Commission's small business provisions for LMDS have historically deviated from those adopted for other services, and the Commission believes that an effort to conform them to the provisions adopted for other types of wireless services would be pointless.

V. Asset Test

22. *Petitions.* WebCel, Zip, and NVCA suggest the institution of an asset test in the Commission's small business size standards to differentiate start-ups from larger entities. WebCel's suggested asset test would consist of a ''financial eligibility threshold'' excluding firms with total assets in excess of $500 million, the measure of which would include the value of other licenses held. Zip suggests financial eligibility thresholds of $250 million for small businesses, and $500 million for entrepreneurs. Zip theorizes that the lack of discussion in the *LMDS Second Report and Order* of the Commission's decision not to adopt an asset threshold test, as well as the requirement in § 101.1109(c) of the Commission's rules that winning bidders' records include asset information, indicates that the absence of an asset test may have been an oversight. NVCA would have us apply the $500 million threshold employed in other auctions.

23. *Discussion.* The Commission will not adopt an asset test for the LMDS

auction. Although the Commission has adopted an asset test for eligibility for particular blocks of licenses in broadband PCS auctions, the Commission has never before employed an asset test for eligibility for small business size standards. The Commission also notes that the Small Business Administration, the rules of which have formed the basis for much of its own consideration of small business provisions, presently does not employ asset tests in its business size standards except in the context of banks. Assets, being potentially fluid and subject to inconsistent valuation (*e.g.,* intangibles) are generally much less ascertainable than gross revenues or numbers of employees. The Commission further notes that it has never counted licenses won in other auctions as assets for purposes of calculating total assets, as requested by WebCel, and there would appear to be significant questions of proper valuation (*e.g.,* amortization schedules) in doing so. Given the complexity and significance of the issues associated with asset tests and the importance of proceeding with the LMDS auction without further delay, the Commission do not feel that it has enough data at this time to do adopt an asset test for LMDS. However, the Commission will consider adopting an asset test in future auctions in its part 1 rulemaking.

VI. Exclusion of Delinquent and Defaulted Debtors

24. *Petitions.* Cook Inlet suggests that licensees that are delinquent or in default on their installment payment obligations in other services should be ineligible for special bidding provisions in LMDS. Cook Inlet's limitation would also apply to the delinquent and/or defaulting licensees' affiliates and attributable investors. Cook Inlet considers this particularly appropriate if installment payment plans are not offered, believing that a bidder that is prepared to pay in full should be required to dedicate those funds to the satisfaction of an existing Commission obligation before acquiring new licenses. Cook Inlet asserts that ''bidders should not expect that delinquency or default exists as a money management system in one auction without consequence in another.'' Cook Inlet accordingly suggests that the Commission require entities that are seeking favorable provisions in the LMDS auction to certify on their short-form applications (FCC Form 175) that neither they nor their affiliates or attributable investors are delinquent or in default on any Commission competitive bidding installment payment obligation.

25. *Discussion.* The Commission declines to further address the qualifications of licensees that are delinquent or in default on other FCC licenses for obtaining favorable provisions for the LMDS auction. The Commission agrees with Cook Inlet that, as a matter of policy, it may be desirable to exclude licensees that have defaulted on existing obligations from further favorable small business provisions. However, the Commission has already amended § 1.2105(a) of its part 1 rules to indicate that ''an applicant's signature on FCC Form 175 or its electronic submission of this form will serve to certify that the applicant is not in default on any payment for Commission licenses (including down payments) and that it is not delinquent on any non-tax debt owed to any federal agency.'' Moreover, § 1.2105(a)(2)(v) of the Commission's part 1 rules requires a certification that the applicant is legally, technically, financially and otherwise qualified to bid. The Commission therefore believes that its existing rules address this issue.

VII. Supplemental Final Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (''RFA''), a Final Regulatory Flexibility Analysis (''FRFA'') was incorporated in Appendix D of the *LMDS Second Report and Order* in this proceeding. The Commission's Supplemental Final Regulatory Flexibility Analysis (''SFRFA'') in this *Second Order on Reconsideration* reflects revised or additional information to that contained in the FRFA, and incorporates the FRFA by reference. The SFRFA is thus limited to matters raised in petitions for reconsideration of the *LMDS Second Report and Order* and addressed in the *Second Order on Reconsideration.* This SFRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (''CWAAA''), Public Law 104–121, 110 Stat. 846 (1996). Title II of the CWAAA is the ''Small Business Regulatory Enforcement Fairness Act of 1996,'' codified at 5 U.S.C. 601 *et seq.*

A. Need For, and Objectives of, the Second Order on Reconsideration

27. This *Second Order on Reconsideration* is issued in response to certain petitions for reconsideration of the *LMDS Second Report and Order.* The revisions in the Commission's rules made in the *Second Order on Reconsideration* are intended to address concerns raised in the record concerning the competitive bidding rules for LMDS, while otherwise reaffirming the Commission's commitment to the rapid implementation of LMDS throughout the United States.

B. Summary of Significant Issues Raised by the Public Comments in Response to the Final Regulatory Flexibility Statement

28. No comments were received in direct response to the FRFA, but the *Second Order on Reconsideration* addresses three petitions for reconsideration of the *LMDS Second Report and Order* that raise issues affecting small businesses. One petitioner asks that the Commission reconsider its rules making installment payments available to small business LMDS licensees and replace the installment payment plans with heightened bidding credits. Contrary to that request, another petitioner requests that the Commission augment its LMDS installment payment plan with an additional ''deferred incremental repayment'' installment payment option delaying payment of principal until late in the license term. One petitioner supporting retention of installment payments alternatively suggests that the Commission adopt higher bidding credits if installment payments are eliminated. Two petitioners ask that the Commission reconsider its rules defining small business size categories and that it consider establishing additional categories for very small businesses, with heightened bidding credits and/or more favorable installment payment terms. One of those petitioners also requests that the Commission adopt an asset test to distinguish between the various existing and proposed small business size categories. Finally, one petitioner asks that the Commission hold licensees that are delinquent or in default on their installment payment obligations in other services ineligible for special bidding preferences in LMDS. Oppositions, replies to oppositions, and *ex parte* comments were filed in response to the petitions and were considered before a decision was reached.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

29. As in the FRFA, the service regulations the Commission adopts to implement LMDS would apply to all entities seeking an LMDS license. As discussed in the FRFA, using the Small Business Administration (''SBA'') definitions applicable to radiotelephone

companies and to cable and pay television services, the majority of LMDS entities to provide video distribution and telecommunications services may be small businesses. *See* FRFA at 8–10.

30. The commission had not developed a more refined definition of small entities applicable to LMDS prior to the *LMDS Second Report and Order* because LMDS is a new service. The RFA amendments were not in effect until shortly before the *Fourth NPRM* in this proceeding was released. *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* CC Docket No. 92–297, *First Report and Order and Fourth Notice of Proposed Rulemaking,* 61 FR 39425 (July 29, 1996). No data has been received establishing the number of small businesses associated with LMDS. However, in the *Third NPRM* in this proceeding, the Commission proposed to auction the spectrum for assignment and requested information regarding the potential number of small businesses interested in obtaining LMDS spectrum, in order to determine their eligibility for special provisions such as bidding credits and installment payments to facilitate participation of small entities in the auction process. *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* CC Docket No. 92–297, and *Suite 12 Petition for Pioneer's Preference,* PP–22, *Third Notice of Proposed Rulemaking and Supplemental Tentative Decision,* 60 FR 43740 (August 23, 1995) (''*Third NPRM*''). In the *LMDS Second Report and Order* the Commission adopted criteria for defining small businesses for purposes of determining such eligibility. The Commission will use this definition for estimating the potential number of entities applying for auctionable spectrum that are small businesses.

31. In Section II.D.2.e. of the *LMDS Second Report and Order* the Commission adopted criteria for defining small businesses and other eligible entities for purposes of defining eligibility for bidding credits and installment payments. The Commission defined a small business as an entity that, together with affiliates and controlling principals, has average gross revenues not exceeding $40 million for the three preceding years. Additionally, bidding credits and installment payments were made available to applicants that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of more than $40 million but not more than $75 million (''entrepreneurs''). In the *Second Order on Reconsideration* the Commission adopts a ''very small business'' category. A very small business is defined as an entity that, together with controlling principals and affiliates, has average annual gross revenues for the three preceding years of not more than $15 million. These entities were previously included within the small business definition. The SBA has not yet approved these definitions in the context of LMDS. The definitions have received SBA approval in the context of broadband Personal Communications Services (''PCS'').

32. No parties submitting or commenting on the petitions giving rise to the *Second Order on Reconsideration* commented on the potential number of entities that would be very small businesses, and the Commission is unable to predict accurately the number of applicants for LMDS that would fit the definition of a small business or very small business for competitive bidding purposes. However, in the FRFA, the Commission estimated the number of applicants that are small businesses based on the rules for the Multipoint Distribution Service (''MDS''), which use the same size standard as was adopted for LMDS. In MDS, a small business is ''an entity that together with its affiliates has average annual gross revenues that are not more than $40 million for the preceding three years.'' *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Fixed Television Service,* MM Docket No. 94–131, *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* PP Docket No. 93–253, *Report and Order,* 60 FR 36524 (July 17, 1995), *adopting* 47 CFR § 21.961(b)(1). A total of 154 applications were received in the MDS auction, of which 141, or 92 percent, qualified as small businesses. MDS rules did not provide a very small business definition. The Commission notes, however, that in the broadband PCS F Block rules, it adopted a very small business definition like the one adopted for LMDS. *Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* WT Docket No. 96–59, *Amendment of the Commission's Cellular/PCS Cross-Ownership Rule,* GN Docket No. 90–314, *Report and Order,* 61 FR 33859 (July 1, 1996), *adopting* 47 CFR § 24.720(b)(2). In the broadband PCS F Block auction, 53.9 percent of the applicants were very small businesses. Specifically, 82 of 152 applicants in the broadband PCS F Block auction, and 70 of the 125 winners (56 percent), were very small businesses.

33. The Commission plans to issue two licenses for each of the 492 BTAs, excluding New York, that are the geographic basis for licensing LMDS. Thus, 984 licenses will be made available for authorization in the LMDS auction. Inasmuch as 92 percent of the applications received in the MDS auction were from entities qualifying as small businesses, the Commission anticipates receiving at least the same proportion of applications from small business entities seeking LMDS licenses. Further, as many as 53.9 percent of these entities could be very small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

34. These descriptions will remain unchanged, for purposes of this *Second Order on Reconsideration,* from those in the FRFA.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. While installment payment plans for small entities in LMDS are eliminated in the *Second Order on Reconsideration,* the Commission found that better alternatives to assist small businesses, as well as ensure provision of new services to the public, are to raise bidding credits for existing categories of small entities and adopt an additional category for very small businesses. The Commission agrees with the suggestions of two petitioners that bidding credits of sufficient size will enable small businesses to secure private financing. This suggestion is consistent with the Commission's experience in other auctions in which installment payments were not offered and small entities nevertheless have been successful. The Commission notes, for example, the auction of Wireless Communications Service licenses, for which bidding credits were heightened to accommodate the lack of installment payments. *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (''WCS''),* GN Docket No. 96–228, *Report and Order,* 62 FR 9636 (March 3, 1997).

Prior to the *Second Order on Reconsideration,* bidding credits of 15 percent were offered to entrepreneurs, and 25 percent to small businesses. The Commission now offers bidding credits of 25 percent for entrepreneurs, 35 percent for small businesses, and 45 percent for very small businesses. As noted in the *Second Order on Reconsideration,* it is difficult to calculate accurately the net present value of an installment payment plan (which value would depend on several variables, including future commercial interest rates), and the Commission does not in any event commit to an exact accommodation or reimbursement of the value of installment payments. Additionally, the adoption of a category for very small businesses, featuring a bidding credit higher than those offered to small businesses and entrepreneurs, will serve as an effective method of leveling the competitive imbalance between those entities, as well as allowing very small businesses to compete more effectively with large entities. Since the Commission decided not to offer installment payments in LMDS, it rejected as moot both the suggestion of a deferred incremental repayment option and the suggestion of a favorable interest rate for very small businesses.

36. The Commission disagreed with the assertion that small businesses would require a 50 percent bidding credit to attract private financing in the absence of installment payments. This assertion is unsupported and is at odds with the levels suggested by another petitioner as being sufficient to attract private financing without installment payments. The levels of bidding credits adopted offer a reasonable accommodation for the elimination of installment payments and constitute a reasonable compromise between the levels suggested in lieu thereof. Also, although adopting the suggestion of an additional category for very small businesses, the Commission rejected the suggestion of a second additional category for entities that, together with controlling principals and affiliates, have average annual gross revenues for the three preceding years of not more than $3 million. This suggestion, which was part of an *ex parte* comment and not significantly elucidated, would create, in essence, a ''very, very small business'' category that would add another layer of complexity with little apparent countervailing benefit to bidders.

37. The Commission also declined to adopt an asset test to distinguish between the small business size categories. Assets, being potentially fluid and subject to inconsistent valuation, are generally less ascertainable than gross revenues or numbers of employees. Although the Commission has adopted an asset test for eligibility for particular blocks of licenses in broadband PCS auctions, it has never employed an asset test in its small business size standards. Nor does the SBA employ an asset test in its business size standards, except in the context of national and commercial banks, savings institutions, and credit unions (for which asset reporting obligations exist for other regulatory purposes). 13 CFR § 121.201, Standard Industrial Classifications 6021–6082 and n.7.

38. Finally, the Commission declined to further address the qualifications of licensees that are delinquent or in default on FCC licenses in other services for obtaining favorable provisions for the LMDS auction. While the Commission agrees that, as a matter of policy, it may be desirable to exclude licensees that have defaulted on existing obligations from further small business provisions, its existing rules already address this issue. An applicant's signature on FCC Form 175 or its electronic submission of that form serves to certify that the applicant is not in default on any payment for Commission licenses (including down payments), that it is not delinquent on any non-tax debt owed to any federal agency, and that it is legally, technically, financially and otherwise qualified to bid. 47 CFR 1.2105(a)(2)(x) and (v).

VIII. Report to Congress

39. The Commission will enclose a copy of the *Second Order on Reconsideration,* including this SFRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act. 5 U.S.C. 801(a)(1)(A). A copy of the *Second Order on Reconsideration* and this SFRFA (or summary thereof) will also be published in the **Federal Register** and will be sent to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 604(b).

IX. Ordering Clauses

40. Accordingly, *it is ordered* that the Petition for Partial Reconsideration filed by WebCel Communications, Inc., is granted in part and denied in part; the Petition for Reconsideration filed by Cook Inlet Region, Inc., is granted in part and denied in part; and the Petition for Partial Reconsideration filed by CellularVision USA, Inc., is granted in part and denied in part.

41. It is further ordered that part 101 of the Commission's Rules is amended as set forth below.

42. It is further ordered that the rule changes made herein will become effective November 17, 1997. This action is taken pursuant to Section 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j).

43. It is further ordered that the Commission shall send a copy of this *Second Order on Reconsideration,* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 101

Fixed microwave service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 101 of title 47 of the Code of Federal Regulations is amended as follows:

PART 101—FIXED MICROWAVE SERVICE

1. The authority citation continues to read as follows:

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

2. Section 101.1105 is revised to read as follows:

§ 101.1105 Submission of payments.

(a) Each applicant to participate in an LMDS auction will be required to submit an upfront payment in accordance with § 1.2106 of this chapter as announced by the Wireless Telecommunications Bureau by Public Notice.

(b) Winning bidders in LMDS auctions must submit a down payment to the Commission in an amount sufficient to bring their total deposits up to 20 percent of their winning bids within ten business days following the release of a Public Notice announcing the close of the auction. Winning bidders must pay the full balance of their winning bids within ten business days following the release of a Public Notice that the Commission is prepared to award the licenses.

3. Section 101.1107 is revised to read as follows:

§ 101.1107 Bidding credits for very small businesses, small businesses and entrepreneurs; unjust enrichment.

(a) A winning bidder that qualifies as a very small business or a consortium of very small businesses pursuant to § 101.1112 may use a bidding credit of

45 percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a small business or a consortium of small businesses pursuant to § 101.1112 may use a bidding credit of 35 percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs pursuant to § 101.1112 may use a bidding credit of 25 percent to lower the cost of its winning bid.

(d) The bidding credits referenced in paragraphs (a), (b) and (c) of this section are not cumulative.

(e) Unjust enrichment.

(1) A licensee that utilizes a bidding credit, and that during the initial license term seeks to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a bidding credit, will be required to reimburse the U.S. Government for the amount of the bidding credit, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted, as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer. If, within the initial license term, a licensee that utilizes a bidding credit seeks to make any ownership change that would result in the licensee losing eligibility for a bidding credit (or qualifying for a lower bidding credit), the amount of the bidding credit (or the difference between the bidding credit originally obtained and the bidding credit for which the restructured licensee would qualify), plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the ownership change.

(2) The amount of payments made pursuant to paragraph (e)(1) of this section will be reduced over time as follows:

(i) A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or the difference between the bidding credit obtained by the original licensee and the bidding credit for which the post-transfer licensee is eligible);

(ii) In year three of the license term the payment will be 75 percent;

(iii) In year four of the license term the payment will be 50 percent; and

(iv) In year five of the license term the payment will be 25 percent, after which there will be no required payment.

§ 101.1108 [Removed and reserved]

4. Section 101.1108 is removed and reserved.

5. Section 101.1109 is revised to read as follows:

§ 101.1109 Certifications, disclosures, records maintenance and audits.

(a) Short-form applications: certifications and disclosure. In addition to certifications and disclosures required in part 1, subpart Q, of this chapter, each applicant for an LMDS license which qualifies as a very small business, small business or entrepreneurs pursuant to § 101.1112 shall append the following information as an exhibit to its short-form applications (FCC Form 175):

(1) The identities of the applicant's affiliates and controlling principals; and

(2) The applicant's gross revenues, computed in accordance with § 101.1112.

(b) Long-form applications: certifications and disclosure. In addition to the requirements in § 1.2107 of this chapter, each applicant submitting a long-form application for an LMDS license and qualifying as a very small business, small business or entrepreneur pursuant to § 101.1112 shall, in an exhibit to its long-form application:

(1) Disclose separately and in the aggregate the gross revenues, computed in accordance with § 101.1112, for each of the following: the applicant, the applicant's affiliates, the applicant's controlling principals, and, if a consortium of very small businesses, small businesses or entrepreneurs, the members of the consortium;

(2) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a very small business, small business or entrepreneur, including the establishment of de facto and de jure control; such agreements and instruments include, but are not limited to, articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements including letters of intent, oral or written; and

(3) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(c) Records maintenance. All winning bidders qualifying as very small businesses, small businesses or entrepreneurs shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any document necessary to establish eligibility as a very small business, small business or entrepreneur. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(d) Audits.

(1) Applicants and licensees claiming eligibility as a very small business, small business or entrepreneur pursuant to § 101.1112 shall be subject to audits by the Commission. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (FCC Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed LMDS service, and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

6. Section 101.1112 is revised to read as follows:

§ 101.1112 Definitions.

(a) Scope. The definitions in this section apply to §§ 101.1101 through 101.1112, unless otherwise specified in those sections.

(b) Very small business. A very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million.

(c) Small business. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of more than $15 million but not more than $40 million.

(d) Entrepreneur. An entrepreneur is an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of more than $40 million but not more than $75 million.

(e) For purposes of determining whether an entity meets the definition of very small business, small business or entrepreneur, the gross revenues of the applicant, its affiliates and controlling principals shall be considered on a cumulative basis and aggregated.

(f) Consortium. A consortium of very small businesses, small businesses or entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a very small business, small business or entrepreneur. Each individual member must establish its eligibility as a very small business, small business or entrepreneur. Where an applicant (or licensee) is a consortium of very small businesses, small businesses or entrepreneurs, the gross revenues of each business shall not be aggregated.

(g) Gross revenues. Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (FCC Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(h) Affiliate.

(1) Basis for affiliation. An individual or entity is an affiliate of an applicant if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant;

(ii) Is directly or indirectly controlled by the applicant;

(iii) Is directly or indirectly controlled by a third party or parties who also control or have the power to control the applicant; or

(iv) Has an ''identity of interest'' with the applicant.

(2) Nature of control in determining affiliation.

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (h)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer, or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions if the voting stock is so widely distributed that no effective control can be established.

Example for paragraph (h)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are controlling principals of the applicant, the other entity will be deemed an affiliate of the applicant.

(3) Identity of interest between and among persons. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

(i) Spousal affiliation. Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) Kinship affiliation. Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context ''immediate family member'' means father, mother, husband, wife, son, daughter, brother, sister, father-or mother-in-law, son-or daughter-in-law, brother-or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, and half-brother or -sister. This presumption may be rebutted by showing that:

(A) The family members are estranged;

(B) The family ties are remote; or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (h)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has a controlling interest in an LMDS license application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) Affiliation through stock ownership.

(i) An applicant is presumed to control or have the power to control a concern if she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he owns, controls, or has the power to control less than 50 percent of the concern's voting stock, if the block of stock she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements

to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (h)(5). If company B holds an option to purchase a controlling interest in company A, which holds a controlling interest in an LMDS applicant, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (h)(5). If a large company, BigCo, holds 70 percent (70 of 100 outstanding shares) of the voting stock of company A, who holds a controlling interest in an LMDS license applicant, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule, which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (h)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) Affiliation under voting trusts.

(i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors or the management (or both) of another entity.

(8) Affiliation through common facilities. Affiliation generally arises where one concern shares office space, employees, or other facilities (or any combination of the foregoing) with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) Affiliation through contractual relationships. Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control.

(10) Affiliation under joint venture arrangements. A joint venture for size determination purposes is an association of concerns or individuals (or both), with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(11) Exclusion from affiliation coverage. For purposes of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of this section, except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

[FR Doc. 97–24789 Filed 9–16–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 180
Wednesday, September 17, 1997

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Chapter IV

General Administrative Regulations; Nonstandard Underwriting Classification System

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Advanced Notice of Proposed Rulemaking; Request for Comments.

SUMMARY: This notice announces a public comment period on the Nonstandard Underwriting Classification System (NCS) which is administered by the Federal Crop Insurance Corporation (FCIC) in conjunction with the Federal crop insurance program. The NCS program compares an individual producer's crop loss history with the losses for the producer's county. If the producer exceeds the level of loss frequency and severity set by FCIC, the producer's rates and coverages are adjusted to bring the policy into line with FCIC's statutory mandate to implement an actuarially sound crop insurance program. Concurrently, the loss histories for these NCS producers are removed from the accumulated program statistics which are used to set the insurance rates for the remainder of the policyholder population. This has the effect of moderating rate increases for the majority of producers by making high loss producers responsible for paying more premium based on their individual risk.

A number of interested parties, including producer groups and insurance agent associations, have indicated that NCS does not treat producers fairly and that it does not correctly identify those producers who represent greater risk to the crop insurance program based on their individual loss histories. These comments have come at a time when FCIC is seeking ways to improve the NCS process relative to reducing the administrative burden of the program. In its current form, NCS creates a significant amount of work to review individual producers who are selected under the current NCS regulations.

FCIC is soliciting comments concerning improving NCS in a manner consistent with the administration of an actuarially sound crop insurance program.

DATES: Submit comments on or before October 17, 1997.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Claims and Underwriting Services Division, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, S.W., STOP 0803, room 6749–S, Washington, D.C. 20250–0803. A copy of each response will be available for public inspection and copying during regular business hours (7:00 a.m. to 4:30 p.m., Eastern Time, at the above address).

FOR FURTHER INFORMATION CONTACT: Michael F. Hand, Director, Claims and Underwriting Services Division, Risk Management Agency, at the Washington, D.C. address listed above, telephone (202) 720–3439.

SUPPLEMENTARY INFORMATION:

Title: Nonstandard Underwriting Classification System. 7 CFR part 400, subpart O.

Respondents/Affected Entities: Parties affected by the NCS process and any changes which may occur as a result of this review include producers, insurance companies reinsured by FCIC, and insurance agents.

Abstract: FCIC is conducting a review of the NCS program to address reported and identified problems with the process as it currently exists. FCIC had previously identified a need to change the system consistent with a need to simplify the crop insurance program in general and reduce the time and resources needed to administer NCS each year. The goal was to identify advances in the availability of crop insurance program data and computer processing capabilities and use these improvements to automate the NCS process.

Subsequent to the start of the automation improvement effort, FCIC began to receive comments regarding perceived problems with the NCS selection process. For many producers in the Upper Midwest and Southwest, 1997 was the third year of consecutive flooding or drought respectively. Producers who had received crop insurance payments in 1995 and 1996 were concerned that the 1997 losses in conjunction with any other loss history they had would result in their being placed on NCS. Combined with the increasing emphasis being placed on crop insurance by lending institutions, some producers worried that a sharp increase in premium rates or adjustment to their coverage could adversely impact their ability to obtain financing. Additional comments received reflected concerns about the impact of NCS on new producers and other situations which might be viewed as being unfair relative to the NCS selection process.

FCIC is seeking public comment on a range of options being considered to address the above stated issues. These options include but are not limited to: (a) Eliminate the NCS program altogether; (b) amend the current NCS program regulations as needed in order to address identified issues (to include moderation of premium increases and changes to recognize and exclude widespread disasters.); (c) implement an entirely new NCS process that would segregate producers with excessive crop insurance losses and rate their policies separate from the mainstream producer population (proposals include the use of premium adjustment tables to identify excessive ratios, using Actual Production History (APH) yield floors to trigger higher premium rates, or other means of identifying the frequency and severity of losses); (d) maintain the current NCS program and adjust the process to achieve administrative efficiencies and assure fair and equitable determinations; and (e) place a two year moratorium on the current regulation to delay adding any new NCS selections until acceptable program changes can be implemented. If sufficient consensus exists, FCIC would consider implementing the revised NCS process for the 1999 crop year.

Background: The NCS program was implemented in 1991 in response to data analysis which showed that a relatively small number of crop insurance policyholders were receiving as much as twenty-eight (28) percent of the indemnities for the period reviewed. The purpose of NCS was to isolate producers with adverse loss experience

exceeding established limits and rate them separately from the rest of the policyholder population. This concept is consistent with other private and public insurance programs which have the means to identify participants with high losses and separately rate them for the risk associated with the losses they have incurred. In 1997 25,126 NCS listings appeared on county crop actuarial documents. This number, which is less than two percent of the policyholders with active crop policies in 1996, includes producers no longer actively engaged in farming, as well as duplicate names for those producers who farm multiple crops or farm in more than one county. The list does not include other persons who share in the crop with a NCS producer, but who are required to pay the same NCS rates as the listed producer. The primary benefit of the NCS program is that by individually rating high loss producers under this process, FCIC is able to exclude their loss histories from the premium rating formulas. It has been estimated that on a crop policy basis, this saves non-NCS producers from five to nine percent on the cost of their crop insurance coverage. It has also been estimated that if NCS were eliminated, the reintroduction of the loss history into the rating pool would result in across the board premium increases for all non-NCS producers of $50 to $90 per crop policy annually.

Under the current NCS regulations, producers are selected for NCS adjustment if they meet the following criteria:

(1) Three or more indemnified losses during the NCS base period, (The base period generally means ten consecutive crop years. The base period for 1998 NCS selections is 1987–1996 for most crops.)

(2) Cumulative indemnities exceed same period cumulative premiums by at least $1,000.

(3) A premium has been earned in at least one of the most recent 4 crop years in the base period.

(4) The result of dividing the number of indemnified losses during the base period by the number of years premium is earned is equal to, or greater than, .60.

(5) Either of the following apply:

(a) The ''Z'' score (a reference loss ratio used to ensure comparability between producers) equals 2.00 or greater; or

(b) Five or more indemnified losses have occurred during the NCS base period and the cumulative loss ratio equals 1.50 or greater.

The consecutive occurrence of widespread adverse weather conditions in the Upper Midwest and Southwest, at the same time when changing U.S. farm policy has increased producer's reliance on crop insurance, has resulted in a greater awareness of the NCS program. Some producers are concerned that their recent losses will be followed by selection for NCS rate or coverage adjustments. This concern has also been echoed by producer organizations and elected representatives. FCIC had formulated a two tiered strategy to deal with these concerns. The short-term plan was to thoroughly review the 1998 NCS selections to ensure that producers who had been impacted by widespread disasters were not placed on NCS based primarily on losses associated with the disasters. For the longer term, FCIC was to survey interested parties about NCS and form a work group to recommend changes to the NCS program for the 1999 crop year. The survey was completed and the responses received reviewed. The work group was not formed because of concerns relating to the Federal Advisory Committee Act. Instead, FCIC has determined to seek public comment regarding the NCS process through the **Federal Register** and this notice. Comments received in response to the original survey will be considered in conjunction with any comments received in response to this notice.

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be not significant for the purposes of Executive Order 12866, and, therefore, this rule has not been reviewed by OMB.

Signed in Washington, D.C., on September 12, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–24770 Filed 9–16–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–05]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D series turbofan engines, that currently requires a determination of the utilization rate and coating type of the 7th, 8th, 9th, 10th, 11th, and 12th stage high pressure compressor (HPC) disks, and removal, inspection for corrosion, and recoating of those HPC disks based on utilization rate. This action would shorten the inspection interval for certain low utilization disks. This proposal is prompted by reports of an additional uncontained 9th stage HPC disk failure due to corrosion pitting. The actions specified by the proposed AD are intended to prevent fracture of the HPC disks, which can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

DATE: Comments must be received by November 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–05, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All

communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–05.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–05, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On September 15, 1994, the Federal Aviation Administration (FAA) issued airworthiness directive AD 94–20–01, Amendment 39–9029 (59 FR 49175, September 27, 1994), applicable to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines, to require a record search, initial and repetitive on-wing and shop inspections to detect corrosion on high pressure compressor (HPC) disks, and removal from service of engines with HPC disks corroded beyond serviceable limits. That action was prompted by an investigation into an uncontained PW JT8D engine failure caused by severe corrosion on the 9th stage HPC disk. That condition, if not corrected, could result in fracture of the HPC disks, which can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

Since the issuance of that AD, the FAA has received a report of a Boeing 737–232 powered by JT8D–7B turbofan engines that experienced an uncontained 9th stage HPC disk rupture in December 1995 during takeoff, which resulted in aircraft damage. The investigation determined that the 9th stage HPC disk rim failed due to a fatigue crack originating from a corrosion pit on the forward surface of the rim in the bottom of a compressor blade dovetail slot, which propagated in low cycle fatigue, and eventually fractured the hub. The investigation also identified extensive corrosion pitting in multiple sites that were concentrated in the outer web and rim areas of the disk.

Airworthiness Directive 94–20–01 was published due to a similar uncontained PW JT8D series 9th stage HPC disk failure in which corrosion pitting was a factor. The investigation into this earlier failure also identified extensive corrosion on the failed 9th stage disk as well as the 8th and 10th stage disks. Corrosion pits as deep as 0.020 inch and 0.060 inch in diameter were found in some areas of the ruptured 9th stage HPC disk. This earlier investigation concluded that PW JT8D HPC disks are more susceptible to severe corrosion when operating in a low utilization profile. Low utilization operating profiles can induce formation of condensation within the engine, thereby promoting corrosion scales and pits, which adversely affect the disk fatigue lives. As a compounding influence, low utilization rates imply longer on-wing calendar intervals and less frequent engine shop visits and module disassembles.

This earlier investigation also evaluated the effectiveness of the protective coatings and lubricant/anti-gallant films used on the PW JT8D HPC disks. The FAA determined that varying degrees of corrosion resistance depends on the type of coating. As a result of this earlier investigation, the FAA issued AD 94–20–01, requiring a record search of the service history of the 8th, 9th, and 10th high pressure compressor disks, initial and repetitive on-wing and shop inspections to detect corrosion on HPC disks, and removal from service of engines with HPC disks corroded beyond serviceable limits. The inspection program of AD 94–20–01 accounts for the variability in corrosion resistance and provides separate inspection instructions and criteria depending on the type of protective coating applied.

This proposed AD would supersede AD 94–20–01 and require the same record search and inspection program but on a more conservative inspection schedule. The proposed AD would require the low utilization disks, regardless of the disk coating, to be inspected at an interval of 7 years since new, replated, or corrosion inspected (YRSNRC) in accordance with the engine manual. Currently, the inspection interval for low utilization disks is based on the disk coating and the maximum inspection interval ranges from 9 to 11 YRSNRC depending on the part number and the type of coating. The high utilization disk inspection interval remains unchanged.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. 6038, Revision 5, dated August 17, 1994, that describes on-wing and shop inspections to detect corrosion on HPC disks, and removal from service of HPC disks corroded beyond serviceable limits.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–20–01 to shorten the inspection interval for certain low utilization disks.

There are approximately 11,119 engines of the affected design in the worldwide fleet. The FAA estimated that 6,815 engines installed on aircraft of U.S. registry were affected by AD 94–20–01, and 2 work hours would be necessary to determine the utilization rate and type of surface treatment. Based on domestic fleet-wide data, the FAA estimated that approximately 8.7% or 593 engines were considered to have low utilization rates. Approximately 8.6 work hours would be required to remove these engines from the aircraft, 500 work hours to tear down, deblade, and to reassemble the engine, and 8.6 work hours to reinstall the reassembled engines. The FAA estimated 69% of the removed engines would require scrapping the disks. The FAA assumed that three disks per engine may require replacement, and the cost of a new disk would be approximately $7,000. The average labor rate is $60 per work hour. Based on these figures, the total cost impact of AD 94–20–01 on U.S. operators was estimated to be $14,279,542. The cost increase between AD 94–20–01 and this proposed AD is based on the increased inspections of some low utilization disks. The FAA estimates 31% of the low utilization disks would require an additional inspection. The cost of these additional inspections is estimated to be $4,426,658.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9029 (59 FR 49175, September 27, 1994) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 97–ANE–05. Supersedes AD 94–20–01, Amendment 39–9029.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines installed on but not limited to Boeing 737 and 727 series, and McDonnell Douglas DC–9 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the high pressure compressor (HPC) disks, which can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage, accomplish the following:

(a) Within four months of the effective date of this AD, determine the fleet and sub-fleet average engine utilization rate for the 12 months of operations prior to August 17, 1994, the issue date of PW Alert Service Bulletin (ASB) No. 6038, Revision 5, in accordance with paragraph 2.A of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(1) For fleet or sub-fleet average utilization rates that are equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, perform the following:

(i) For engines or stage 7 through stage 12 HPC disks that were added to a fleet or subfleet after November 28,1994, and that were previously designated as low utilization disks in accordance with PW ASB No. 6038, Revision 5, dated August 17, 1994, comply with the requirements of paragraph (d) of this AD.

(ii) Designate all other stage 7 through stage 12 HPC disks as high utilization disks and comply with the requirements of paragraph (b) of this AD.

(2) For fleet or sub-fleet average utilization rates that are less than 1,300 hours per year or less than 900 cycles per year, within four months after the effective date of this AD, determine the utilization rate for each stage 7 through stage 12 HPC disk in accordance with paragraph 2.B.(1) of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(i) For each stage 7 through stage 12 HPC disk with an initial utilization rate equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, designate this disk as a high utilization disk and inspect in accordance with paragraph (c) of this AD.

(ii) For each stage 7 through stage 12 HPC disk with an initial utilization rate less than 1,300 hours per year or less than 900 cycles per year, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

(iii) For each stage 7 through stage 12 HPC disk with an unknown initial utilization rate, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

Note 2: Once a disk is designated as low utilization, then it must retain this designation for the life of the disk or until recoated.

(iv) For recoated or new disks, designate this disk as a high utilization disk and inspect in accordance with paragraph (c) of this AD.

(b) For high average utilization fleets and sub-fleets, excluding those disks identified in paragraph (a)(1)(i) of this AD, perform the following for each stage 7 through stage 12 HPC disk in that fleet or sub-fleet:

(1) Inspect, and recoat or replace if necessary, at the next part accessibility of the disk, in accordance with paragraph 2.D.(1)(b) and Chart A of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(2) Recalculate the fleet or sub-fleet average utilization rate at 12 month intervals after the previous date of utilization determination in accordance with paragraph 2.B of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(i) For fleet or sub-fleet average utilization rates that are equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, continue to designate all stage 7 through stage 12 HPC disks as high utilization disks and comply with the requirements of paragraph (b) of this AD.

(ii) For fleet or sub-fleet average utilization rates that are less than 1,300 hours per year or less than 900 cycles per year, within four months of compliance with paragraph (b)(2) of this AD, determine the utilization rate for each stage 7 through stage 12 HPC disk in accordance with paragraph 2.B.(1) of PW ASB No. 6038, Revision 5, dated August 17, 1994, as follows:

(A) For each stage 7 through stage 12 HPC disk with a utilization rate equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, designate this disk as a high utilization disk and inspect in accordance with paragraph (c) of this AD.

(B) For each stage 7 through stage 12 HPC disk with a utilization rate less than 1,300 hours per year or less than 900 cycles per year, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

(C) For each stage 7 through stage 12 HPC disk with an unknown utilization rate, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

Note 3: Once a disk is designated as low utilization, then it must retain this designation for the life of the disk or until recoated.

(c) For high utilization stage 7 through stage 12 HPC disks, perform the following:

(1) Inspect, and recoat or replace if necessary, at the next part accessibility of the disk, in accordance with paragraph 2.D.(1)(b) and Chart A of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(2) Calculate the disk utilization rate at 12 month intervals after the previous date of utilization determination, or after installation of new or recoated disks, in accordance with paragraph 2.B.(3) of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(i) For stage 7 through stage 12 HPC disks designated as high utilization in accordance with (c)(2), comply with the requirements of paragraph (c)(1) of this AD.

(ii) For stage 7 through stage 12 HPC disks designated as low utilization in accordance with (c)(2), comply with the requirements of paragraph (d) of this AD.

(d) For low utilization stage 7 through stage 12 HPC disks, perform the following:

(1) For Nickel Cadmium coated disks listed by Part Number (P/N) in Chart B of PW ASB No. 6038, Revision 5, dated August 17, 1994, and Aluminide coated disks listed by P/N in Chart C of PW ASB 6038, Revision 5, dated August 17, 1994, inspect, and recoat or remove from service in accordance with PW JT8D Engine Manual, P/N 481672, at the time intervals specified in Table A of this AD.

(2) For Nickel Cadmium coated disks listed by P/N in Chart C of PW ASB No. 6038, Revision 5, dated August 17, 1994, inspect and recoat or remove from service in accordance with PW JT8D Engine Manual, P/N 481672, at the time intervals specified in Table B of this AD.

(3) For Aluminide coated disks listed by P/N in Chart B of PW ASB No. 6038, Revision 5, dated August 17, 1994, inspect and recoat or remove from service in accordance with PW JT8D Engine Manual, P/N 481672, at the time intervals specified in Table C of this AD.

TABLE A.—INSPECTION INTERVAL FOR LOW UTILIZATION DISKS NICAD COATED DISKS FROM CHART B OF PW ASB NO. 6038, REVISION 5, DATED AUGUST 17, 1994, AND ALUMINIDE COATED DISKS FROM CHART C OF PW ASB NO. 6038, REVISION 5, DATED AUGUST 17, 1994

Years since new, replated or corrosion inspected (YRSNRC) per engine manual	Remove to inspect and recoat or replace
Less than or equal to 5.0 YRSNRC.	By 7 YRSNRC.
Greater than 5.0 but less than or equal to 6 YRSNRC.	Within 24 months of the effective date of this AD.
Greater than 6 but less than or equal to 7 YRSNRC.	Within 18 months of the effective date of this AD.
Greater than 7 but less than or equal to 8 YRSNRC.	Within 15 months of the effective date of this AD.
Greater than 8 but less than or equal to 9 YRSNC.	Within 12 months of the effective date of this AD.
Greater than 9 but less than or equal to 10 YRSNRC.	Before reaching 10 YRSNRC.
Greater than 10 years	Before further flight.

TABLE B.—INSPECTION INTERVAL FOR LOW UTILIZATION DISKS NICAD COATED DISKS FROM CHART C OF PW ASB NO. 6038, REVISION 5, DATED AUGUST 7, 1994.

Years since new, replated or corrosion inspected (YRSNRC) per engine manual	Remove to inspect and recoat or replace
Less than or equal to 5.0 YRSNRC.	By 7 YRSNRC.
Greater than 5.0 but less than or equal to 6 YRSNRC.	Within 24 months of the effective date of this AD.
Greater than 6 but less than or equal to 7 YRSNRC.	Within 21 months of the effective date of this AD.
Greater than 7 but less than or equal to 8 YRSNRC.	Within 18 months of the effective date of this AD.
Greater than 8 but less than or equal to 9 YRSNC.	Within 15 months of the effective date of this AD.

TABLE B.—INSPECTION INTERVAL FOR LOW UTILIZATION DISKS NICAD COATED DISKS FROM CHART C OF PW ASB NO. 6038, REVISION 5, DATED AUGUST 7, 1994.—Continued

Years since new, replated or corrosion inspected (YRSNRC) per engine manual	Remove to inspect and recoat or replace
Greater than 9 but less than or equal to 10 YRSNRC.	Within 12 months of the effective date of this AD.
Greater than 10 but less than or equal to 11 YRSNRC.	Before reaching 11 YRSNRC.
Greater than 11 years	Before further flight.

TABLE C.—INSPECTION INTERVAL FOR LOW UTILIZATION DISKS ALUMINIDE COATED DISKS FROM CHART B OF PW ASB NO. 6038, REVISION 5, DATED AUGUST 17, 1994.

Years since new, replated or corrosion inspected (YRSNRC) per engine manual	Remove to inspect and recoat or replace
Less than or equal to 5.0 YRSNRC.	By 7 YRSNRC.
Greater than 5.0 but less than or equal to 6 YRSNRC.	Within 24 months of the effective date of this AD.
Greater than 6 but less than or equal to 7 YRSNRC.	Within 18 months of the effective date of this AD.
Greater than 7 but less than or equal to 8 YRSNRC.	Within 12 months of the effective date of this AD.
Greater than 8 but less than or equal to 9 YRSNC.	Before reaching 9 YRSNRC.
Greater than 9 years	Before further flight.

(e) For stage 7 through stage 12 HPC disks that have been recoated in accordance with paragraphs (b)(1), (c)(1), or (d)(1) of this AD, designate these disks as high utilization and perform the following:

(1) For disks installed in an engine that is part of a high utilization fleet, comply with the requirements of paragraph (b) of this AD.

(2) For disks installed in an engine that is part of a low utilization fleet, comply with the requirements of paragraph (c) of this AD.

(f) For the purpose of this AD, recoat of an HPC disk is defined as removal and application of new plating or coating in accordance with Sections 72–36–41, Repair 02; 72–36–42, Repair 02; 72–36–43, Repair 03; 72–36–44, Repair 03; 72–36–45, Repair 03; or 72–36–46, Repair 03, as applicable, of PW JT8D Engine Manual P/N 481672.

(g) For the purpose of this AD, part accessibility is defined as the removal of the disk from the engine and deblading of that disk.

(h) For the purpose of this AD, a sub-fleet is defined as any individual aircraft or any portion of an operator's fleet that operates in a separate and unique route structure, characterized by different flight lengths, frequencies, or geographic location.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on September 10, 1997.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–24799 Filed 9–16–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 295

[Docket No. 970822201–7201–01]

RIN 0693–AB44

Advanced Technology Program

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The National Institute of Standards and Technology requests comments on proposed revisions to the regulations which implement the Advanced Technology Program (ATP), found at part 295 of title 15 of the Code of Federal Regulations. Major changes proposed today include an increase in the cost-sharing requirement for large companies applying as single proposers in future competitions; modification of the ATP evaluation criteria for project selection to place greater emphasis on joint ventures and consortia with a broad range of participants; and changes in the valuation of transfers between separately-owned joint venture members and applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are

transferred from one joint venture member to other separately-owned joint venture members. These changes strengthen the fundamental mission of the ATP: for Government to work in partnership with industry to foster the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant, broad-based economic benefits for the nation.

DATES: Comments on the proposed program must be received no later than October 17, 1997.

ADDRESSES: Comments on the proposed program must be submitted in writing to: Advanced Technology Program Rule Comments, National Institute of Standards and Technology, Room A333, Administration Building, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: To receive additional program information, contact Barbara Lambis at (301) 975–4447.

SUPPLEMENTARY INFORMATION: In a statement to Congress in March of 1997, Secretary of Commerce William M. Daley announced a Departmental study of several issues raised by Members of Congress and others concerning the policies and procedures of the ATP. The study was designed to make recommendations for possible changes to improve the effectiveness of the program. Following issuance of a 30-day notice of opportunity for public comment on ways to improve the operation of the ATP, recommendations for possible changes were made to improve the effectiveness of the program.

In order to implement the recommendations and the decisions of Secretary Daley, the National Institute of Standards and Technology is today proposing changes to the operating procedures of the Advanced Technology Program found at part 295 of title 15 of the Code of Federal Regulations. These changes strengthen the fundamental mission of the ATP: For Government to work in partnership with industry to foster the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant, broad-based economic benefits for the nation. Such a unique government-industry research partnership fosters the acceleration not only of dramatic gains in existing industries, but also acceleration of the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services for the world's markets and work to spawn industries of the 21st century. Furthermore, the proposed changes also ensure that the fundamental strengths of the ATP remain unchanged, especially the requirement that the ATP continue to be a wholly merit-driven program based on peer review. These changes are reflected in proposed amendments to the regulation contained in this Notice:

- Proposed revised section 295.32(b) increases the cost-sharing requirement for large companies applying as single proposers in future competitions. ''Large businesses'' as the term is proposed to be defined in the revised Sec. 295.2(k), are proposed to cost-share at a minimum of 60 percent. This change is proposed to provide an incentive for large companies to participate in joint ventures and to guarantee that large companies pay a majority of total project costs.
- The term ''large business'' is proposed to be defined as including any business, including any parent company and related subsidiaries, having revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds. In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing. This is a response to a perceived need to eliminate the problem of unintentionally disadvantaging thousands of medium-sized firms of limited resources. The new definition provides for a simple, unambiguous and relatively effective measure of size.
- The ATP evaluation criteria for project selection are proposed to be modified to: (1) place greater emphasis on joint ventures and consortia with a broad range of participants; and (2) better define the multi-step selection process based on all of the criteria in Sec. 295.6. these proposed changes reaffirm ATP's increased emphasis on partnerships as part of the ATP's overall goals. Further, these changes will encourage joint ventures and consortia that team large companies with smaller companies and other technology resources, such as universities and federal laboratories, and will create new relationships among small and large companies to develop new technologies and bring them to commercialization.
- A new rule is proposed regarding the valuation of transfers between separately-owned joint venture members and applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned joint venture members. This proposal resulted from negotiations between the Department of Commerce's Inspector General and ATP concerning the valuation of transfers of certain goods and services within joint ventures. This proposal appears in Sec. 295.25.
- Also, a number of administrative and clerical changes are proposed to be implemented to Part 295 for consistency and clarity.

Request for Comments

The National Institute of Standards and Technology requests comments on the draft revisions to regulations found at 15 CFR part 295, implementing the Advanced Technology Program, which are included in this notice. Persons interested in commenting on the proposed program should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying in the Commerce Department's Central Reference and Records Inspection Facility, Herbert Hoover Building, Room 6020, 14th Street between E Street and Constitution Avenue NW., Washington, DC 20230.

Additional Information

Executive Order 12866

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule, if promulgated, will not have a significant economic effect on a substantial number of small entities. (5 U.S.C. 605(b)). This is because there are only a small number of awardees and thus only a small number of awards will be given to small businesses. Specifically, based on past experience and currently foreseen budgets, the ATP would expect to receive only a few hundred proposals annually from small businesses, and from these, to make under 100 awards. The program is entirely voluntary for the participants that seek funding.

Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act. The collection of information requirement applies to persons seeking financial assistance under the Advanced Technology Program as well as reporting requirements if financial assistance is granted. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act. The public reporting burden per respondent for the collection of information contained in this rule is estimated to range between 20 and 30 hours per submission and 3 hours annually for recipients of financial assistance to provide monitoring reports. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of NIST's burden estimate; (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. Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: Desk Officer for NIST); and to Barbara Lambis, Room A333, Administration Building, National Institute of Standards and Technology, Gaithersburg, MD 20899.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

Executive Order 12372

Executive Order 12372 ''Intergovernmental Review of Federal Programs'' does not apply to this program.

List of Subjects in 15 CFR Part 295

Inventions and patents, Laboratories, Research, Science and Technology, Scientists.

Dated: September 12, 1997.

Elaine Bunten-Mines,

Director, Program Office.

For reasons set forth in the preamble, it is proposed that title 15, part 295 of the Code of Federal Regulations be amended as follows:

PART 295—ADVANCED TECHNOLOGY PROGRAM

1. The authority citation for part 295 continues to read as follows:

Authority: 15 U.S.C. 278n.

2. Section 295.1 is revised to read as follows:

§ 295.1 Purpose.

(a) The purpose of the Advanced Technology Program (ATP) is to assist United States businesses to carry out research and development on high risk, high pay-off, emerging and enabling technologies. These technologies are:

(1) High risk, because the technical challenges make success uncertain;

(2) High pay-off, because when applied, they offer significant benefits to the U.S. economy; and

(3) Emerging and enabling, because they offer wide breadth of potential application and form an important technical basis for future commercial applications.

(b) These rules prescribe policies and procedures for the award of cooperative agreements under the advanced Technology Program in order to ensure the fair treatment of all proposals. While the Advanced Technology Program is authorized to enter into grants, cooperative agreements, and contracts to carry out its mission, these rules address only the award of cooperative agreements. The Program employs cooperative agreements rather than grants because such agreements allow ATP to exercise appropriate management oversight of projects and also to link ATP-funded projects to ongoing R&D at the National Institute of Standards and Technology wherever such linkage would increase the likelihood of success of the project.

(c) In carrying out this rule, the Program endeavors to put more emphasis on joint ventures and consortia with a broad range of participants, including large companies, and less emphasis on support of individual large companies.

3. Section 295.2(c) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(c) The term ''direct costs'' means costs that can be identified readily with activities carried out in support of a particular final objective. A cost may not be allocated to an award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as an indirect cost. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel working on the ATP project and associated reasonable fringe benefits such as medical insurance. Direct costs might also include supplies and materials, special equipment required specifically for the ATP project, and travel associated with the ATP project. ATP shall determine the allowability of direct costs in accordance with applicable Federal cost principles.

* * * * *

4. Section 295.2 is further amended by removing paragraph (e), redesignating paragraphs (f) through (k) as paragraphs (e) through (j), removing paragraph (n), redesignating paragraphs (o) through (r) as paragraphs (n) through (q), and adding new paragraph (k) to read as follows:

§ 295.2 Definitions.

* * * * *

(k) The term ''large business'' for a particular ATP competition means any business, including any parent company and related subsidiaries, having revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds required by § 295.7(a). In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing.

* * * * *

5. The newly designated § 295.2(g) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(g) The term ''indirect costs'' means those costs incurred for common or joint

objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. ATP shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.

* * * * *

6. The newly designated § 295.2(h) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(h) The term ''industry-led joint research and development venture'' means a joint research and development venture that consists of two or more separately-owned, for-profit businesses that perform research and development in the project; control the venture's membership, research directions, and funding priorities; and share total project costs with the Federal government. The venture may include additional companies, independent research organizations, universities, and/or governmental laboratories (other than NIST) which may or may not contribute funds (other than Federal funds) to the project and perform research and development. An independent research organization may perform administrative tasks on behalf of an industry-led joint research and development venture, such as handling receipts and disbursements of funds and making antitrust filings.

* * * * *

7. Redesignated § 295.2(j)(1)(vi) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(j) * * *

(1) * * *

(vi) Any combination of the purposes specified in paragraphs (j)(1)(i), (ii), (iii), (iv) and (v) of this section, and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in paragraph (j)(2) of this section.

* * * * *

8. Section 295.2(l) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(l) The term ''matching funds or cost sharing'' means that portion of project costs not borne by the federal government. Sources of revenue to satisfy the required cost share include cash and in-kind contributions. Cash contributions can be from recipient, state, county, city, or other non-Federal sources. In-kind contributions can be made by recipients or non-federal third parties (except subcontractors working on an ATP project) and include but are not limited to equipment, research tools, software, and supplies. Except as specified at § 295.25 of this regulation, the value of in-kind contributions shall be determined in accordance with OMB Circular A–110, Subpart C, Section 23. The value of in-kind contributions will be prorated according to the share of total use dedicated to the ATP program. ATP restricts the total value of in-kind contributions that can be used to satisfy the cost share by requiring that such contributions not exceed 30 percent of the non-federal share of the total project costs. ATP shall determine the allowability of matching share costs in accordance with applicable Federal cost principles.

* * * * *

9. Section 295.3(c) is added as follows:

§ 295.3 Eligibility of United States and foreign-owned businesses.

* * * * *

(c) Companies owned by legal residents (green card holders) may apply to the Program, but before an award can be given, the owner(s) must either become a citizen or ownership must be transferred to a U.S. citizen(s).

10. Section 295.4 is revised to read as follows:

§ 295.4 The selection process.

(a) The selection process for awards is a multi-step process based on the criteria listed in § 295.6. A source evaluation board (SEB) is established to ensure that all proposals receive careful consideration. In the first step, called ''preliminary screening,'' proposals are eliminated that do not meet the requirements of this rule or the Program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage is that the proposal: is deemed to have serious deficiencies in either the technical or business plan; involves product development rather than high risk R&D; is not industry-led; is significantly overpriced or underpriced given the scope of the work; does not meet the requirements set out in the notice of availability of funds issued pursuant to § 295.7; or, in the case of joint ventures, requests more than a minority share of funding. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and, if not, may reject the proposal or forward it to a later stage in the review process based upon the earlier review.

(b) In the second step, referred to as the ''technical and business review,'' proposals are evaluated under the criteria found in § 295.6. Proposals judged to have the highest merit based on the selection criteria receive further consideration and are referred to as ''semifinalists.''

(c) In the third step, referred to as ''selection of finalists,'' the Program prepares a final scoring and ranking of semifinalist proposals. During this step, the semifinalist proposers may be asked to make oral presentations on their proposals at NIST, and in some cases site visits may be required. Subject to the provisions of § 295.6, a list of ranked finalists is submitted to the Selecting Official.

(d) In the final step, referred to as ''selection of awardees,'' the Selecting Official selects funding recipients from among the finalists, based upon;

(1) The rank order of the proposals on the basis of all selection criteria § 295.6;

(2) Assuring an appropriate distribution of funds among technologies and their applications; and

(3) The availability of funds. The Selecting Official is responsible for ensuring that only proposals that meet the Program selection criteria receive awards. The Program reserves the right to withhold awards in any case where a search of Federal records discloses information that raises a reasonable doubt as to the responsibility of the proposer. The decision of the Selecting Official is final.

(e) If a joint venture is ranked as a finalist, but the Program determines that the joint venture contains weaknesses in its structure or cohesiveness that may substantially lessen the probability of the proposed program being completed successfully, the Program may inform the proposer of the deficiencies and enter into negotiations with the proposer in an effort to remedy the deficiencies. If appropriate, funding up to 10 percent of the amount originally requested by the proposer may be

awarded by the Program to the proposer to assist in overcoming the organizational deficiencies. If the Program determines within six months of this award that the organizational deficiencies have been corrected, the Program may award the remaining funds requested by the proposer to that proposer.

(f) NIST reserves the right to negotiate with proposers selected to receive awards the cost and scope of the proposed work, e.g., to add or delete a task(s) to improve the probability of success or to make the proposal more consistent with ATP's mission.

11. Section 295.6 is revised to read as follows:

§ 295.6 Criteria for selection.

The evaluation criteria to be used in selecting any proposal for funding under this Program, and their respective weights, are listed below. No proposal will be funded unless the Program determines that it has high scientific and technical merit, no matter how meritorious the proposal might be with respect to the other selection criteria. Similarly, no proposal will be funded that does not require Federal support or that is product development rather than high risk R&D.

(a) Scientific and Technical Merit (30 percent).

(1) Quality, innovativeness, and cost-effectiveness of the proposed technical program, that is, uniqueness with respect to current industry practice. Proposers shall compare and contrast their approaches with those taken by other domestic and foreign companies working in the same field.

(2) Appropriateness of the technical risk and feasibility of the project, that is, is there a sufficient knowledge base to justify the level of technical risk involved, and is the risk commensurate with the potential payoff. Projects should press the state of the art while still having credibility with regard to technical approach.

(3) Coherency of the technical plan and clarity of vision of the technical objectives, and the degree to which the technical plan meets the project and, and in the case of focused program competitions, program goals.

(4) Integrated, forward-looking, team approach to the project. This factor includes the extent to which the R&D team will take into account aspects such as research and raw material suppliers and considerations of manufacturability and requirements of customers, regulatory concerns, safety issues, and environmental impacts. It also includes the extent to which all of the necessary technical disciplines will be brought into the R&D and how R&D, manufacturing, and marketing will work together in an integrated fashion.

(5) Potential broad impact on U.S. technology and knowledge base.

(b) Potential Net Broad-Based Economic Benefits (20 percent). Potential to improve U.S. economic growth, taking into account the timeliness of the proposal; that is, the potential project results will not occur too late or too early to be competitively useful, and the degree to which ATP support is essential for the achievement of the broad-based benefits from the proposed R&D and appropriateness of proposed R&D for ATP support. This criterion takes into consideration the likelihood of the results being achieved in the same general time frame by the proposer or by other U.S. researchers without ATP support, and whether other Federal agencies or other sponsors are already funding very similar kinds of work. Projects will not be selected if the Program judges that Federal support is not needed. In assessing the potential for broad-based economic benefits, emphasis is placed on a strong potential for spillover benefits extending well beyond those accruing to the awardee(s). Benefits are compared against the costs of the proposal to determine cost-effectiveness of the proposal.

(c) Adequacy of Plans for Eventual Commercialization (20 percent).

(1) Evidence that if the project if successful, the proposers will pursue further development of the technology toward commercial application, either through their own organization(s) or through others.

(2) Degree to which proposal identifies potential applications of the technology and provides evidence that the proposer has credible plans to assure prompt and widespread use of the technology if the R&D is successful and to ensure adequate protection of the intellectual property by the participant(s) and, as appropriate, by other U.S. businesses.

(d) Level of Commitment and Organizational Structure (20 percent).

(1) Level of commitment of proposer as demonstrated by contribution of personnel, equipment, facilities, and cost-sharing. Extent to which the proposer assigns the company's best people to the project. Priority given to this work in relation to other company activities.

(2) For joint ventures, the extent to which the joint venture has been structured (vertical integration, horizontal integration, or both) so as to include sufficient participants possessing all of the skills required to complete successfully the proposed work.

(3) For joint ventures, the extent to which participation by small businesses is encouraged and is a key component of the proposal.

(4) Appropriateness of subcontractor/supplier/collaborator participation and relationships (where applicable). For large company single proposers, the extent to which subcontractor teaming arrangements are featured and are a key component of the proposal.

(5) Clarify and appropriateness of management plan. Extent to which the proposers have clarified who is responsible for each task, and the chain of command. Extent to which those responsible for the work have adequate authority and access to higher level management.

(e) Experience and Qualifications (10 percent).

(1) Adequacy of proposer's facilities, equipment, and other technical, financial, and administrative resources to accomplish the proposed program objectives. This factor includes consideration of resources possessed by subcontractors to the proposer or other collaborators.

(2) Quality and appropriateness of the technical staff to carry out the proposed work program and to identify and overcome barriers to meeting project objectives.

(3) Past performance of the company or joint venture members in carrying out similar kinds of efforts successfully, including technology application. Consideration of this factor in the case of a start-up company or new joint venture, will take into account the past performance of the key people in carrying out similar kinds of efforts.

(f) Each of the subfactors within a selection criterion shall be weighted equally.

(12) Section 295.12 is revised to read as follows:

§ 295.12 Special reporting and auditing requirements.

Each award by the Program shall contain procedures regarding technical, business, and financial reporting and auditing requirements to ensure that awards are being used in accordance with the Program's objectives and applicable Federal cost principles. The purpose of the technical reporting is to monitor ''best effort'' progress toward overall project goals. The purpose of the business reporting system is to monitor project performance against the Program's mission as required by the Government Performance and Results Act (GPRA) mandate for program evaluation. The audit standards to be

applied to ATP awards are the ''Government Auditing Standards (GAS) issued by the Comptroller General of the United States (also known as yellow book standards) and the ATP program-specific audit guidelines.

The ATP program-specific audit guidelines include guidance on the number of audits required under an award. In the interest of efficiency, the recipients are encouraged to retain their own independent CPA firm to perform these audits. The Department of Commerce's Office of Inspector General (OIG) reserves the right to conduct audits as deemed necessary and appropriate.

§ 295.12 [Removed]

13. Section 295.14 is removed.

14. Section 295.22 is revised to read as follows:

§ 295.22 Limitations on assistance.

(a) An award will be made under this subpart only if the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

(b) The total value of any in-kind contributions used to satisfy the cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

15. Section 295.25 is added as follows:

§ 295.25 Special rule for the valuation of transfers between separately-owned joint venture members.

(a) *Applicability.* This section applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned joint venture members.

(b) *Rule.* The greater amount of the actual cost of the transferred goods and services as determined in accordance with applicable Federal cost principles, or 75 percent of the best customer price of the transferred goods and services, shall be deemed to be allowable costs; provided, however, that in no event shall the aggregate of these allowable costs exceed 30 percent of the non-Federal share of the total cost of the joint research and development program.

(c) *Definition.* The term ''best customer price'' shall mean the GSA schedule price, or if such price is unavailable, the lowest price at which a sale was made during the last twelve months prior to the transfer of the particular good or service.

16. Sections 295.31 and 295.32 are revised to read as follows:

§ 295.31 Qualification of proposers.

Awards under this subpart will be available to all businesses subject to the limitations set out in §§ 295.3 and 295.32.

§ 295.32 Limitations on assistance.

(a) The Program will not directly provide funding under this Subpart to any governmental entity, academic institution or independent research organization.

(b) For proposals submitted to ATP after November 1, 1997, awards to large businesses made under this Subpart shall not exceed 40 percent of the total project costs of those awards in any year of the award.

(c) Awards under this subpart may not exceed $2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session. No funding for indirect costs, profits, or management fees shall be available for awards made under this Subpart.

(d) The total value of any in-kind contributions used to satisfy a cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

17. In addition to the amendments set forth above, in 15 CFR part 295 remove the word ''applicants'' or ''applicant'' and add in its place the word ''proposers'' or ''proposer'' in the following places

a. Section 295.7(a), (b) and (c);
b. Section 295.21 section heading;
c. Subpart C heading; and
d. Section 295.31 section heading.

[FR Doc. 97–24709 Filed 9–16–97; 8:45 am]
BILLING CODE 3510–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[OSM SPATS No. ND–035–FOR, North Dakota Amendment No. XXV]

North Dakota Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to a proposal to eliminate the requirement for companies to submit a copy of the federal reclamation fee report, changes to revegetation success standards, and a new rule on inspection frequencies for inactive mines. The amendment is intended to revise the North Dakota program to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t. October 17, 1997. If requested, a public hearing on the proposed amendment will be held on October 14, 1997. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on October 2, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Federal Building, room 2128, Casper, Wyoming 82601–1918

James R. Deutsch, Director, Reclamation Division, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, Telephone: (701) 328–2252

FOR FURTHER INFORMATION CONTACT: Guy Padgett, (307) 261–6550; Internet address, gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can

be found at 30 CFR 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated August 29, 1997 North Dakota submitted a proposed amendment to its program pursuant to SMCRA (Amendment number XXV), administrative record No. ND–Z–01, 30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise were: NDAC 69–05.2–13–01, concerning its Coal Production and Reclamation Fee Report; NDAC 69–05.2–22–07, concerning reclamation success standards for woodlands and shelterbelts; and the addition of NDAC 69–05.2–28, concerning inspections on inactive mine sites.

Specifically, North Dakota proposes to: (1) delete its requirement that mining companies provide the Public Service Commission with a copy of the Coal Production and Reclamation Fee Report that is submitted to OSM; (2) revise North Dakota's rules concerning revegetation standards for reclaimed woodlands and shelterbelts, which require that at least eighty percent of the trees, shrubs and half-shrubs counted for meeting standards be in place for at least six years, and deem the standard satisfied if the mine operator demonstrates that no tree, shrub or half-shrub replanting has occurred during the last six years of the responsibility period; (3) give mining companies the option of proving reclamation success for three out of five consecutive years, starting no sooner than the eighth year of the responsibility period; and (4) add a rule to reduce the number of inspections from twelve to four per year that must be conducted on inactive mine sites at mines where coal production has permanently ceased and all disturbed areas have been reclaimed and revegetated.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria on 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on October 2, 1997. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year

on any governmental entity of the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1997.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 97–24683 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–05–M

Notices

Federal Register

Vol. 62, No. 180

Wednesday, September 17, 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

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request an extension for information collections currently in effect with respect to the End-Use Certificate Program.

DATES: Comments on this notice must be received on or before November 17, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Charles Emler, USDA, Farm Service Agency, Warehouse and Inventory Division, Inventory Management Branch, STOP 0553, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0553, (202) 720–6125; e-mail ccclist@wdc.fsa.usda.gov; or facsimile (202) 690–0014.

SUPPLEMENTARY INFORMATION:

Title: End-Use Certificate Program.

OMB Control Number: 0560–0151.

Expiration Date of Approval: January 31, 1998.

Type of Request: Extension of currently approved information collection.

Abstract: The information collected under OMB Control Number 0560–0151, as identified above, ensures that Canadian wheat does not benefit from USDA or Commodity Credit Corporation assisted export programs. To comply with the provisions of the North American Free Trade Agreement Implementation Act, FSA requires information from the importers, subsequent buyers, and end-users that will assist in tracking the Canadian wheat within the U.S. marketing system.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 0.2 hours per response.

Respondents: Wheat importers, traders, and end-users.

Estimated Number of Respondents: 430.

Estimated Number of Responses per Respondent: 66.

Estimated Total Annual Burden on Respondents: 5,676 hours.

Proposed topics for comment include: (a) Whether the continued 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 FSA's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information collected; or (d) minimizing the burden of the collection of the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Charles Emler at the address listed above. All comments will become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, DC, on September 9, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 97–24690 Filed 9–16–97; 8:45 am]

BILLING CODE 3410–05–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:00 p.m. on October 16, 1997, at the Anchorage Hilton, 500 West Third Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to hold a briefing on civil rights issues and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gilbert Gutierrez, 907–443–5682, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 11, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–24600 Filed 9–16–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on October 9, 1997, at the U.S. Commission on Civil Rights Central Regional Office, Gateway Tower II, Suite 908, 400 State Avenue, Kansas City, Kansas 66101. The purpose of the meeting is to plan for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working

days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 11, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–24598 Filed 9–16–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 1:45 p.m. and adjourn at 5:00 p.m. on Tuesday, October 14, 1997, at the Blue Cross-Blue Shield of Vermont, 1 East Road, Montpelier, Vermont 05401. The purpose of the meeting is to continue project planning in preparation for the November community forum on racial harassment in Vermont public schools.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Kimberly B. Cheney, 802–229–0334, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 11, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–24599 Filed 9–16–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India, Notice of Extension of Time Limit for New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results for the new shipper administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 1996, through January 31, 1997. The review covers two producers/exporters of the subject merchandise (*i.e.* Ferro Alloys Corporation Limited and Panchmahal Steels Limited). This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''the Act'') and the Department's regulations as published in the **Federal Register** on May 11, 1995 (60 FR 25130).

EFFECTIVE DATE: September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Craig Matney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189 or 482–0588, respectively.

SUPPLEMENTARY INFORMATION: The Department of Commerce (''the Department'') initiated this new shipper administrative review of the antidumping duty order on stainless steel bar from India on March 28, 1997 (62 FR 14886). The current deadline for the preliminary results in September 16, 1997. Pursuant to 19 CFR 353.22 (h)(7), the Department has determined that this case is extraordinarily complicated and as such is extending the deadline for issuing the preliminary results. This extension is necessary to provide the Department additional time to consider the appropriate date of sale.

In accordance with 19 CFR 353.22(h)(7), the Department will extend the time for completion of the preliminary results of this new shipper review to no later that January 14, 1998. We plan to issue the final results within 90 days after the date of the preliminary results are issued.

Dated: September 11, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, AD/CVD Enforcement.

[FR Doc. 97–24712 Filed 9–16–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–075. *Applicant:* University of Utah, Department of Geology and Geophysics, 719 W.B.B., Salt Lake City, UT 84112. *Instrument:* Mass Spectrometer, Model 215–50. *Manufacturer:* Mass Analyser Products, Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure small stable isotope differences in natural materials in studies of the following: (1) production rates of cosmogenic isotopes, (2) cosmogenic dating of exposure surfaces, (3) groundwater dating using He-3 and He-4, (4) dissolved gases in waters: 4H2 fluxes and (5) dissolved gases in waters: paleotemperatures. In addition, the instrument will be used for educational purposes in geology and biology courses. *Application accepted by Commissioner of Customs:* August 26, 1997.

Docket Number: 97–076. *Applicant:* University of California, School of Medicine, Department of Biological Chemistry, 4303 Tupper Hall, Davis, CA 95616. *Instrument:* Electron Spin Resonance Spectrometer, Model JES-TE100. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used for studies of proteins spin-labeled with a nitroxide compound and proteins with a bound paramagnetic metal ion. The research focus is the elucidation of protein structure, in particular membrane proteins, using molecular genetic manipulation to incorporate spectroscopic probes at specific sites in protein. In addition, the instrument will be used for training undergraduate and graduate-level students and post-

doctoral fellows in the ESR spectroscopic techniques and their use in determining protein structure and function. *Application accepted by Commissioner of Customs:* August 28, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–24711 Filed 9–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure and Alloy Magnesium From Canada; Final Results of the Fourth (1995) Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On May 12, 1997, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada for the period January 1, 1995 through December 31, 1995 (see *Pure Magnesium and Alloy Magnesium From Canada; Preliminary Results of Countervailing Duty Administrative Reviews* (*Preliminary Results*), 62 FR 25924). We have completed these reviews and determine the net subsidy in each to be 3.18 percent *ad valorem* for Norsk Hydro Canada, Inc. (NHCI). We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Marian Wells or Hong-Anh Tran, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6309 or (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 C.F.R. 355.22(a), these reviews cover only those producers or exporters of the subject merchandise for which reviews were specifically requested. Accordingly, these reviews cover only NHCI, a producer of the subject merchandise which exported pure and alloy magnesium to the United States during the review period.

On May 12, 1997, the Department published in the **Federal Register** the *Preliminary Results* of its administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada (62 FR 25924). We invited interested parties to comment on the *Preliminary Results*. On June 10, 1997, case briefs were submitted by NHCI, a producer of the subject merchandise which exported pure and alloy magnesium to the United States during the review period, and the Government of Québec (GOQ). At the request of the GOQ, the Department held a public hearing on June 17, 1997.

These reviews cover the period January 1, 1995 through December 31, 1995 (the period of review or POR). The reviews involve one company (NHCI) and the following programs: Exemption from Payment of Water Bills, Article 7 Grants from the Québec Industrial Development Corporation (SDI), St. Lawrence River Environment Technology Development Program, Program for Export Market Development, the Export Development Corporation, Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec, Opportunities to Stimulate Technology Programs, Development Assistance Program, Industrial Feasibility Study Assistance Program, Export Promotion Assistance Program, Creation of Scientific Jobs in Industries, Business Investment Assistance Program, Business Financing Program, Research and Innovation Activities Program, Export Assistance Program, Energy Technologies Development Program, and Transportation Research and Development Assistance Program.

Applicable Statute

Unless otherwise indicated, all citations to the statute are in reference to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting these administrative reviews in accordance with section 751(a) of the Act.

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Pure and alloy magnesium are currently classifiable under subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Secondary and granular magnesium are not included in the scopes of these orders. Our reasons for excluding granular magnesium are summarized in the *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada* (57 FR 6094, February 20, 1992).

Analysis of Programs

Based upon our analysis of the questionnaire responses and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Exemption from Payment of Water Bills

In the *Preliminary Results,* we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the Preliminary Results. On this basis, the net subsidy rate for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI	0.50

B. Article 7 Grants from the Québec Industrial Development Corporation

In the *Preliminary Results,* we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.* On this basis, the net subsidy rate for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI	2.68

II. Programs Found Not To Be Used

In the *Preliminary Results,* we found that NHCI did not apply for or receive benefits under the following programs:

- St. Lawrence River Environment Technology Development Program
- Program for Export Market Development
- Export Development Corporation
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
- Opportunities to Stimulate Technology Programs
- Development Assistance Program
- Industrial Feasibility Study Assistance Program
- Export Promotion Assistance Program
- Creation of Scientific Jobs in Industries
- Business Investment Assistance Program
- Business Financing Program
- Research and Innovation Activities Program
- Export Assistance Program
- Energy Technologies Development Program
- Transportation Research and Development Assistance Program.

We received no comments on these programs from the interested parties; therefore, we have not changed our findings from the *Preliminary Results*.

Analysis of Comments

Comment 1: Countervailability of the Exemption from Payment of Water Bills NHCI argues that, in calculating the countervailable benefit under this program, the Department has in its *Preliminary Results* overstated the benefit by using the amount NHCI would have paid for water during the POR instead of NHCI's actual water consumption amount during the POR. NHCI claims that absent the credit from its supplier of water, La Societé du Parc Industriel et Portuaire de Bécancour (''Industrial Park''), NHCI would have been subject to a different billing arrangement based on actual water consumption which was the billing basis for all of the other Industrial Park customers. Thus, to calculate the amount of the benefit it received under this program, NHCI argues that the Department should use the amount NHCI would have paid based on its actual water consumption.

NHCI claims that this issue is analogous to the question of what commercial interest rate benchmark should be used where a company is benefitting from a preferential interest rate. As such, NHCI states that the appropriate benchmark to measure the amount of benefit, in this case, is the commercial water rate available to all the other Industrial Park's customers. By using the rate associated with NHCI's credit agreement as opposed to the commercially available rate, NHCI claims that the Department has unlawfully overstated the amount of its benefit.

DOC Position: We disagree with NHCI that in order to measure the benefit conferred by the credit, we are required to hypothesize what NHCI would have paid for its water in the absence of the credit and the contract it entered into. In these reviews, the terms of the contract between NHCI and the Industrial Park state that NHCI is required to pay an amount based, in part, on forecasted consumption. To the extent that the water credit relieved NHCI from paying its water bills, a countervailable benefit existed without regard to whether NHCI would have received different terms under an alternative arrangement. Therefore, we determine that the benefit is the full amount of the credit (see also *Final Results of the First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada, (Final Results of First Magnesium Reviews)*, 62 FR 13857 (March 24, 1997), and *Final Results of the Third Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada, (Final Results of Third Magnesium Reviews)*, 62 FR 18749 (April 17, 1997)).

Comment 2: Article 7 Assistance under the SDI Act: NHCI argues that the Department erroneously stated that the Article 7 assistance was provided to cover a large percentage of the cost of certain environmental protection equipment. Instead, NHCI maintains that, based on the SDI agreement, NHCI was required to satisfy two prerequisites before it could receive any financial assistance from SDI.

NHCI further argues that the Department improperly applied its grant methodology to the Article 7 assistance provided to NHCI. According to NHCI, the Department should have used its loan methodology to calculate the benefits from virtually all of the SDI financial assistance received because NHCI knew at the time it undertook the borrowings that the interest paid on those borrowings would be reimbursed. NHCI states that this would be consistent with the Department's interest rebate methodology, i.e., interest rebates should be considered as reductions in the cost of borrowing if the company knew that it would receive the interest rebates at the time it received the loan (e.g., *Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom* (*UK Steel*), 58 FR 37393, 37397 (July 9, 1993)).

DOC Position: The issue presented by this case is whether the Article 7 assistance received by NHCI should be treated as an interest rebate or as a grant. If it is treated as an interest rebate, then under the methodology adopted by the Department in the 1993 steel cases, the benefit of the Article 7 assistance would be countervailed according to our loan methodology (e.g., *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium*, (*Belgium Steel*) 58 FR 37273, 37276 (July 9, 1993)). However, if treated as a grant, the benefits would be allocated over a period corresponding to the life of the company's assets.

In its brief, NHCI argues that the interest rebate methodology reflects the fact that companies face a choice between debt and equity financing. If a company knows that the government is willing to rebate interest charges before the company takes out a loan, the government is encouraging the company to borrow rather than sell equity. Hence, NHCI concludes, the benefit should be measured with reference to the duration of the borrowing for which the rebate is provided.

We disagree with NHCI's contention that the Department's interest rebate methodology was intended to reflect the choice between equity and loan financing. In the 1993 steel cases, (see e.g., *Belgium Steel*), we examined a particular type of subsidy, (i.e., interest rebates), and determined which of our valuation methodologies was most appropriate. The possible choices were between the grant and loan methodologies. Where the company had knowledge prior to taking the loan out that it would receive an interest rebate, we decided that the loan methodology was most appropriate because there is virtually no difference between the government offering a loan at five percent interest (which would be countervailed according to the loan methodology) and offering to rebate half of the interest paid on a ten percent loan from a commercial bank each time the company makes an interest payment. Hence, we were seeking the closest methodological fit for different types of interest rebates.

However, the interest rebate methodology described in the 1993 steel cases was never intended to dictate that the Department should apply the loan methodology in every situation in which a government makes contributions towards a company's interest obligations. The appropriate methodology depends on the nature of the subsidy. For example, assume that the government told a company that it would make all interest payments on all

construction loans the company took out during the next year up to $6 million. This type of ''interest rebate'' operates essentially like a $6 million grant restricted to a specific purpose. Whether the purpose is to pay interest expenses or buy a piece of equipment does not change the nature of the subsidy. In contrast, the interest rebate methodology is appropriate for the type of interest rebate programs investigated in the 1993 steel cases, i.e., partial interest rebates paid over a period of years on particular long-term loans.

As we did in the 1993 steel cases, the Department in these reviews is seeking the most appropriate methodology for the Article 7 assistance. We erred in our *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada,* 61 FR 11186 (March 19, 1996), in stating that the primary purpose of the Article 7 assistance was to underwrite the purchase of environmental equipment. However, it cannot be disputed that the environmental equipment played a crucial role in the agreement between SDI and NHCI. Most importantly, the aggregate amount of assistance to be provided was determined by reference to the cost of environmental equipment to be purchased. In this respect, the Article 7 assistance is like a grant for capital equipment.

Further, the assistance provided by SDI is distinguishable from the interest rebates addressed in the 1993 steel cases in that the interest payments in the steel cases rebated a portion of the interest paid on particular long-term loans. Here, although the disbursement of Article 7 assistance was contingent, *inter alia,* on NHCI making interest payments, the disbursements were not tied to the amount borrowed, the number of loans taken out or the interest rates charged on those loans. Instead, the disbursements were tied to NHCI meeting specific investment targets and generally to NHCI having incurred interest costs on borrowing related to the construction of its facility.

Therefore, while we recognize that NHCI had to borrow and pay interest in order to receive individual disbursements of the Article 7 assistance, we do not agree that this fact is dispositive of whether the interest rebate methodology used in the 1993 steel cases is appropriate. We believe this program more closely resembles the scenario described above where the government agrees to pay all interest incurred on construction loans taken out by a company over the next year up to a specified amount. Because, in this case, the amount of assistance is calculated by reference to capital equipment purchases (something extraneous to the interest on the loan) and the reimbursements do not relate to particular loans, we determine that the Article 7 assistance should be treated as a grant.

The Department has in past cases classified subsidies according to their characteristics. For example, in the *General Issues Appendix* (GIA) appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria* (58 FR 37217, 37226, (July 9, 1993)), we developed a hierarchy for determining whether so-called ''hybrid instruments'' should be countervailed according to our loan, grant or equity methodologies. In short, we were asking whether the details of particular government ''contributions'' made them more like a loan, a grant or an equity infusion. Similarly, when a company receives a grant, we look to the nature of the grant to determine whether the grant should be treated as recurring or non-recurring. In these reviews, we have undertaken the same type of analysis, i.e., determining an appropriate calculation methodology based on the nature of the subsidy in question. As with hybrid instruments and recurring/non-recurring grants, it is appropriate to determine which methodology is most appropriate based on the specific facts of the Article 7 assistance. Although the Article 7 assistance exhibits characteristics of both an interest rebate and a grant, based on an overview of the contract under which the assistance was provided, we determine that the weight of the evidence in this case supports our treatment of the Article 7 assistance as a grant.

Comment 3: Obligation of Department to Re-examine Specificity of Article 7 Assistance: In the event the Department continues to treat the Article 7 assistance as a nonrecurring grant, the GOQ argues that the Department must re-examine whether the assistance was specific. In particular, the Department is obliged to evaluate, according to the GOQ, in each administrative review the countervailability of a program previously determined to be *de facto* specific, regardless of whether the parties have provided new information. The Department may not rely, as it did in the *Preliminary Results,* on a *de facto* specificity determination made in the original investigations.

DOC Position: Just as it does not revisit prior determinations that a program is not specific, it is the Department's policy not to revisit prior determinations that a program is specific, absent the presentation of new facts or evidence (see e.g., *Carbon Steel Wire Rod From Saudi Arabia; Final Results of Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order,* 59 FR 58814 (November 15, 1994), *Final Results of First Magnesium Reviews,* and *Final Results of Third Magnesium Reviews*). In the present reviews, no new facts or evidence, have been presented which would lead us to question our original specificity determination for the POI.

Comment 4: Alternative Methodology for Determining Specificity of Article 7 Assistance: The GOQ continues to argue, as it has in previous reviews, that the Department should take an entirely different approach to the question of how to determine if a nonrecurring grant is disproportionately large, and therefore, specific. Rather than base its analysis on the entire amount of the grant at the time of bestowal, the GOQ maintains that the Department must instead examine only the portion of the benefit allocated—in accordance with the Department's standard allocation methodology—to the POR. It is this amount, in relationship to the portions of benefits allocated to the POR for all assistance bestowed under the program to all other enterprises, that must be determined to be disproportionate. Because the benefit attributable to the POR is the subsidy at issue, it is that amount, according to the GOQ, that must be found specific before it may be countervailed.

DOC Position: As we have explained in previous final results (see *Final Results of First Magnesium Reviews,* and *Final Results of Third Magnesium Reviews,* the GOQ is confusing the determination of specificity with the measurement of the subsidy. Tellingly, the GOQ is unable to cite a single determination by the Department or any other legal authority to support its argument.

The specificity determination and the measurement of the subsidy are two separate and distinct processes. The question of whether a nonrecurring grant is disproportionately large is based on an examination of the entire amount of the grant at the time of bestowal. If such a grant is found to be disproportionately large, it is determined to be specific. (As a grant specifically provided, it is also at this point that the statutory requirements for countervailing the grant are met. See section 771(5) of the Act.) The separate and distinct second step is the measurement of the benefit. This step involves allocating portions of the grant over time. It is these portions of the grant which then provide the basis for the calculation of the *ad valorem* rate of

subsidization. The portions of subsidies allocated to periods of time using the Department's standard allocation methodology are irrelevant to an examination of the actual distribution of benefits by the granting government at the time of bestowal.

Comment 5: Appropriate Time of Specificity Determination: ''Bestowal'' or Disbursement: The GOQ argues that although the Department concluded in the *Final Results of First Magnesium Reviews* and the *Final Results of Third Magnesium* that the proper time period for a specificity determination is the time of bestowal, the Department did not examine specificity in the original period of investigation (POI) at the time of bestowal. Rather, the Department examined specificity at the time of approval of the funds. The GOQ argues that the time of bestowal for the purpose of a specificity determination should refer to the time of actual disbursement of funds, and should not refer to the time funds are approved by the granting authority.

DOC Position: We disagree with the GOQ's assertion that the Department's specificity analysis during the original investigations should have been conducted based on the time of actual disbursement of funds. We acknowledge that the specificity determination in the original investigations was based on the action of the granting authority, i.e., the GOQ, at the time of approval. However, we note that the Department uses the terms ''approval'' and ''bestowal'' interchangeably in this context. The time of bestowal or approval is the appropriate basis for the specificity determination because it most directly demonstrates whether a government has limited benefits to an enterprise or industry, or group thereof.

Comment 6: Relevance of New Information: The GOQ maintains that given the Department's responsibility to make a finding of specificity and countervailability based on the information relevant to the POR, the Department should consider any new assistance provided by SDI since the end of the original POI. To this end, the GOQ provided information on the Article 7 assistance extended up to, and including, the POR in a submission dated January 15, 1997. According to the GOQ, this new factual information was apparently ignored by the Department when it concluded during the *Preliminary Results* for these reviews that neither the GOQ nor NHCI provided new information which would warrant reconsideration of this determination.

DOC Position: As stated above, the proper time period for a specificity determination is the time of bestowal. Therefore, information submitted by the GOQ concerning assistance that was provided subsequent to the time of bestowal of the assistance granted to NHCI under Article 7 of the SDI Act is not relevant to the specificity determination. The remaining information presented by the GOQ on the Article 7 assistance granted prior to and including the time of bestowal of NHCI's Article 7 benefits is nearly identical to that utilized by the Department in its original specificity determination. Differences between the updated information on Article 7 provided by the GOQ and information used in the original specificity determination are sufficiently small so as not to compromise the original specificity determination.

Comment 7: Relevance of Article 9 Information: The GOQ argues that assistance under Article 9 should be included in the Article 7 specificity analysis because Article 9 was the predecessor of Article 7 and the provisions of Article 9 functioned basically the same as those of Article 7.

DOC Position: We disagree. The GOQ did not provide any information which would allow us to make a determination on whether Article 9 and Article 7 should be considered integrally linked or otherwise considered a single program for purposes of our specificity analysis. Information on the record in these proceedings with respect to Article 9 consists only of a statement by the GOQ in its case brief that Article 9 was the predecessor of Article 7. This is an insufficient basis to determine that the two programs should be treated as one.

Comment 8: Appropriate Denominator: NHCI states that in the *Preliminary Results* the Department deviated from its standard practice in determining the denominator for companies with multinational production facilities that fail to rebut the presumption that subsidies are domestically tied. In particular, NHCI argues that it is the Department's policy to tie such subsidies to domestic operations, by allocating benefits to sales by the domestic company regardless of country of manufacture, as opposed to tying to domestic production, as was done in the *Preliminary Results.* NHCI additionally states that the Department failed both to explain its basis for presuming that the subsidies were tied to Canadian production and to respond to NHCI's arguments in favor of allocating the subsidies over sales by NHCI of subject merchandise regardless of country of manufacture. In so doing, NHCI claims that the Department has denied it due process by preventing it from rebutting the presumption and from responding to the rationale the Department used to support its decision to tie the subsidies to domestic production. In support of its assertion that the subsidies it received are tied to its domestic operations, NHCI states that any funds received benefited all employment-related activities in Canada (e.g., sales of all products) and that these activities are related to both domestic and foreign production. NHCI elaborates further that the denominator policy used by the Department in this case is a deviation from the fungibility of money principle.

NHCI also cites *British Steel plc* v. *United States (British Steel*) (879 F. Supp. 1254, 1317) in which the Court reversed and remanded the Department's determinations because it found that the Department should have given plaintiffs due notice of its decision to apply the rebuttable presumption that the subsidies at issue were tied to domestic production in order to allow plaintiffs the opportunity to rebut the Department's presumption.

DOC Position: NHCI cites *British Steel* to imply that the Department must inform parties early during the course of each proceeding of its intent to use the rebuttable presumption that subsidies to companies with foreign manufacturing operations are tied to domestic production. However, the facts involved in *British Steel* are readily distinguishable. Therefore, the holding in that case does not apply to the present situation.

In *British Steel,* the Court was examining the Department's policy of using the rebuttable presumption articulated in the GIA. In particular, the Court took issue with the introduction of the new policy in the final-determination stage of the investigation, because the timing prevented parties from both commenting on the methodology and from presenting evidence rebutting the presumption. It is important to note that the Department's remand determination, as affirmed by the Court, upheld the appropriateness of using the rebuttable presumption. (*Id.* at 1316). The Department has continued to use the rebuttal presumption and this policy has become accepted Department practice. Unlike *British Steel,* we are not dealing with the introduction of a new policy late into the course of a proceeding in this case. Therefore, the Department was not required to forewarn NHCI of the use of the rebuttable presumption.

We also note that the use of a denominator based only on

domestically produced merchandise did not come as a surprise to NHCI. In the original investigations of these cases (which pre-dated the rebuttable presumption) the Department used a denominator based only on sales of domestically produced merchandise (*Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium From Canada,* 57 FR 30946 (July 13, 1992)). Since the investigations in these cases, there has been a changed circumstances review (57 FR 54047 (November 16, 1992)) and a Binational Panel proceeding. In all of the proceedings, the denominators have included only domestically produced merchandise and in no case has NHCI objected to those denominators. In addition, the questionnaire for these reviews requested information on sales denominators based on domestically produced merchandise. NHCI provided the requested sales denominator information along with denominators based on total sales by NHCI and arguments why those based on total sales should be used. Moreover, sales of domestically produced merchandise were used as the denominator in the *Preliminary Results* as well as every other administrative review of these orders, (see for example, *Final Results of First Magnesium Reviews,* and *Final Results of Third Magnesium Reviews*). As can be seen from the foregoing, NHCI was aware as to the possible use of a denominator based on domestically produced merchandise and did indeed have an opportunity to attempt to rebut the presumption.

NHCI also argues that the Department must explain the basis of its presumption. However, the idea behind the use of a rebuttable presumption is that the fact presumed—in this case that subsidies bestowed on companies with foreign manufacturing operations are tied to domestic production—becomes the default position and does not have to be explained in each case. As the Department stated in the GIA, ''Thus, under the Department's refined ''tied'' analysis, the Department will begin by presuming that a subsidy provided by the government of the country under investigation is tied to domestic production'' (GIA at 37231). It follows that the Department will find that subsidies are tied to domestic production in the absence of evidence to the contrary.

As for NHCI's complaint that the Department failed to address its arguments that the subsidies received by NHCI benefited all of the company's operations, not just its manufacturing activities, we note that in the GIA it states, ''A party may rebut this presumption by presenting evidence tending to show that the subsidy was not tied to domestic production.'' The phrase, ''tending to show'' means that the party attempting to rebut the presumption must provide enough evidence to convince a reasonable fact-finder of the non-existence of the presumed fact—that subsidies are tied to the recipient firm's domestic production (Results of Redetermination Pursuant to Court Remand on General Issues of Sales Denominator: *British Steel plc* v. *United States,* Consol. Ct. No. 93–09–00550–CVD, Slip Op. 95–17 and Order (CIT Feb. 9, 1995) at 17). The mere absence of evidence limiting the government's intended scope of the benefit to domestic production is not sufficient. In this case, NHCI's arguments are unsupported by any evidence that the subsidies bestowed on NHCI were, in whole or in part, tied to foreign production. Therefore, NHCI has failed to rebut the presumption that the subsidies were tied to domestic production.

The Department's methodology for determining what to include in the denominator when a company has foreign manufacturing operations is explained in the GIA: ''If we determine that the subsidy is tied to domestic production, we will allocate the benefit of the subsidy fully to sales of domestically produced merchandise'' (GIA at 37231). This quotation makes it clear that sales of foreign-produced merchandise by a respondent company would not be included in the denominator. Even if we were to consider tying the subsidies at issue to domestic operations, using NHCI's suggestion of a sales denominator based on total NHCI sales would be improper since such a figure would include sales of foreign-produced merchandise by NHCI and, therefore, value-added from operations in other countries. Based on the foregoing arguments, we have continued to allocate subsidies received by NHCI to the company's merchandise produced in Canada.

Final Results of Review

In accordance with 19 CFR § 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 1995 through December 31, 1995, we determine the net subsidy for NHCI to be 3.18 percent *ad valorem*. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of subject merchandise from the reviewed company, NHCI, except from Timminco Limited (which was excluded from the order in the original investigations), entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named (19 CFR 355.22(a)). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company* versus *United States,* 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company, except from Timminco Limited (which was excluded from the order in the original investigations). Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by these orders are those established in the administrative reviews completed for the most recent POR, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. See *Pure and Alloy Magnesium from Canada: Final Results of the Second (1993) Countervailing Duty Administrative Reviews.* This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, for the period January 1, 1995 through December 31, 1995, the assessment rates applicable to all non-

reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 355.34(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.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: September 2, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–24710 Filed 9–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091097A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on July 10, 1997, to the Coastal Oil and Gas Corporation; on July 11, 1997, to Enron Oil and Gas Corporation; on July 18, 1997, to the Louisiana Land and Exploration Company, all of Houston, TX; on July 25, 1997, to Mobil Exploration and Producing U.S. Inc., of New Orleans, LA; and on September 10, 1997, to the Forest Oil Corporation, of Denver, CO, and Unocal of California, of Lafayette, LA.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Charles Oravetz, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Summary of Requests

NMFS received requests for letters of authorization on June 25, 1997, from Coastal Oil and Gas Corporation; on July 11, 1997, from Enron Oil and Gas Corporation; on June 27, 1997, from the Louisiana Land and Exploration Company; on July 17, 1997, from Mobil Exploration and Producing U.S. Inc.; on September 3, 1997, from the Forest Oil Corporation, and on September 4, 1997, from Unocal of California. These letters requested a take by harassment of a small number of bottlenose and spotted dolphins incidental to the described activity. Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: September 11, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–24673 Filed 9–16–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080697A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Hazards Investigations in Puget Sound

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the U.S.Geological Survey (USGS) for an authorization to take small numbers of marine mammals by harassment incidental to collecting deep-crustal marine seismic data in the Puget Sound/Straits of Juan de Fuca region of Washington State. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize USGS to incidentally take, by harassment, small numbers of marine mammals in the above mentioned area during late February or March 1998.

DATES: Comments and information must be received no later than October 17, 1997.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, and a draft environmental assessment (EA), which includes a list of references used in this document, may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Brent Norberg, Northwest Regional Office, NMFS, (206) 526–6733.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) (A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

New section 101(a)(5)(D) of the Marine Mammal Protection Act established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines ''harassment'' as:

> * * * any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On July 2, 1997, NMFS received an application from the USGS, on behalf of the Seismic Hazards Investigations in Puget Sound (SHIPS) project, requesting an authorization for the possible harassment of small numbers of several species of marine mammals incidental to conducting marine seismic surveys in Puget Sound, WA. The survey is to collect data on the earthquake hazards of the Puget Sound area. Geological features around the Puget Sound that might produce earthquakes lie obscured beneath water, city, forest, and thick glacial deposits. As a result, investigators must use sound waves that are produced by an array of airguns to indirectly view these features. Because seismic noise from the proposed survey's airguns could potentially affect marine mammals due to disturbance by sound (i.e., acoustic harassment), an incidental harassment authorization under the MMPA is warranted.

The main goals of the SHIPS project concern understanding earthquake processes and mitigating a potential disaster, not earthquake prediction. Geologists have clear evidence for past earthquakes, but basic geological information about earthquake processes is lacking. To close this critical information gap, the SHIPS consortium will collect seismic reflection and seismic refraction data in and near Puget Sound. Seismic reflection data will help locate potential earthquake faults, and seismic refraction data will show the speed of sound waves in deep rocks. These data together will reveal the structure and physical properties of rocks where earthquakes are likely to occur. Information from onshore seismometers will reveal where deep rocks could focus earthquake waves at the surface and where surface sediment is weak.

Where these conditions of focusing and sediment weakness overlap, buildings and other infrastructure are at elevated risk of damage or destruction during a major earthquake. SHIPS will provide information needed to make maps, for city planners, to show areas of potentially strong ground motion so that scarce funds for seismic retrofitting can be allocated on a rational basis. Prime candidates for retrofitting are schools and hospitals. Freeway interchanges and major bridges as well as structures housing police and firefighters must withstand earthquakes so that survivors receive prompt assistance.

Dependent upon ship scheduling, the seismic survey is expected to take approximately two weeks sometime during late February and March 1998. A detailed description of the work planned is contained in the application (USGS 1997) and the draft EA. These documents are available upon request (see **ADDRESSES**). Description of Habitat and Marine Mammals Affected by the Activity

A description of the Puget Sound ecosystem and its associated marine mammals can be found in the USGS application and associated draft EA.

Marine Mammals

The species of marine mammals that are likely to be present in Puget Sound and Straits of Juan de Fuca include the harbor porpoise (*Phocoena phocoena*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), and harbor seal (*Phoca vitulina*). Additional species that are rare or only occasionally seen in the area at the time of the survey include: Minke whale (*Balaenoptera acutorostrata*), elephant seal (*Mirounga angustirostris*) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern sea lion (*Eumetopias jubatus*), California sea lion (*Zalophus californianus*), humpback whale (*Megaptera novaengliae*), and gray whale (*Eschrichtius robustus*). General information on these latter species can be found in Barlow *et al.* (1995). Information relevant to the distribution, abundance, and behavior of those species most likely to be impacted by the experiment in Puget Sound and the Straits of Juan de Fuca is provided in the application and draft EA. Please refer to those documents for information on the biology, distribution, and abundance of these species.

Potential Effects of Seismic Surveys on Marine Mammals

Discussion

Deep seismic surveys are used to obtain data about rock formations several thousands of feet deep. These surveys are accomplished by transmitting sound waves into the earth, which are reflected off subsurface formations and recorded with detectors in the water column. A typical marine seismic source is an airgun array, which releases compressed air into the water creating an acoustical energy pulse that is directed downwards toward the seabed. Hydrophones spaced along a streamer cable just below the surface of the water receive the reflected energy from the subsurface formations and transmit data to the seismic vessel. Onboard the vessel, the signals are amplified, digitized, and recorded on magnetic tape.

Disturbance by seismic noise is the principal means of taking by this activity. Vessel noise may provide a secondary source. Also, the physical presence of vessel(s) could also lead to some non-acoustic effects involving visual or other cues.

Depending upon ambient conditions and the sensitivity of the receptor,

underwater sounds produced by open-water seismic operations may be detectable some substantial distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or masking a signal of comparable frequency. An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source (or vessel) react to the generated sounds or visual cues.

Seismic pulses are known to cause some species of whales, including gray and bowhead whales, to behaviorally respond within a distance of several kilometers (Richardson *et al.* 1995). Although some limited masking of low-frequency sounds is a possibility for those species of whales using low frequencies for communication, the intermittent nature of seismic source pulses will limit the extent of masking. Bowhead whales, for example, are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.* 1986).

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations and season. Behavioral changes may be subtle alterations in surface-dive-respiration cycles. More conspicuous responses, include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors such as feeding, socializing or mating are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

Hearing damage is not expected to occur during the project. While it is not known whether a marine mammal very close to an airgun array would be at risk of temporary or permanent hearing impairment, temporary threshold shift (TTS) is a theoretical possibility for animals within a few hundred meters (Richardson *et al.* 1995). However, planned monitoring and mitigation measures (described below) are designed to detect marine mammals occurring near the seismic array and to avoid, to the greatest extent practicable, exposing them to sound pulses that have any possibility of causing hearing damage.

Estimates of Harassment Take Levels

Based upon analyses provided in the application and draft EA, the USGS estimates that the number of potential harassment takings resulting from the 1998 Puget Sound marine seismic survey will be as follows:

Harbor porpoise	1,000.
Killer whale	40.
Dall's porpoise	1,000.
Harbor seals	4,500 in Puget Sound, 1,200 in Hood Canal, 5,000 in the Strait of Juan de Fuca.
California sea lions ..	2,000.
Northern sea lions	0.
Elephant seals:	<100.
Pacific white-sided dolphin.	<100.
Minke whale	10.
Humpback whale	≤ 50.
Gray whale	20.

Potential Effect on Habitat

As described in detail in the draft EA, no impact on the habitat or food sources of marine mammals are likely from this short-term marine seismic survey.

Mitigation

Several mitigation measures to reduce the potential for marine mammal harassment will be implemented by USGS as part of their proposed activity. These include:

(1) Scheduling the survey for the period of February/March, when marine mammal abundance in Puget Sound/Straits of Juan de Fuca is low;

(2) To avoid potential Level A harassment of, or injury to, marine mammals, safety zones will be established and monitored continuously (during daylight hours). Whenever the seismic vessel approaches a marine mammal closer than the distance mentioned below and described in more detail in both the application and the draft EA, the USGS would shut off airguns.

(3) For gray, minke, and humpback whales, the marine mammal species that are considered to be most sensitive to the frequency and intensity of sound that will be emitted by the airgun array, airgun operations will cease when members of these species approach within 500 m (1,640 ft) of the seismic vessel.

(4) For odontocetes, with their lower sensitivity to low frequency sound, airgun operations will cease when these animals approach a safety zone of 200 m (656 ft), twice the calculated radius for preventing TTS.

(5) For pinnipeds (seals and sealions), if the SHIPS seismic vessel approaches a pinniped, a safety radius of 100 m (328 ft) will be maintained from the animal(s). However, if a pinniped approaches the towed airgun array, the USGS will not be required to shutdown the airguns. Experience indicates that pinnipeds will come from great distances to scrutinize seismic operations. Seals have been observed swimming within airgun bubbles, 10 m (33 ft) away from active arrays and, more recently, Canadian scientists, who were using a high-frequency seismic system that produced sound closer to pinniped hearing than will the USGS airgun array, describe how seals frequently approached close to the seismic source, presumably out of curiosity. Therefore, because the seismic survey could be severely hampered by delays, because turning across marine traffic lanes to resume work after a shutdown will be risky and costly, and because pinnipeds indicate no reaction to seismic noise, the above-mentioned mitigation plan has been proposed. Instead, the USGS will gather information on how often pinnipeds approach the airgun array on their own volition, and what effect the airguns appear to have on them.

(6) To ensure no marine mammals are inadvertently harmed, when data collection first begins, or resumes, after operations have ceased, the airguns will be turned on sequentially at a rate no greater than 6 dB/minute, so that peak power is achieved gradually to give marine mammals a chance to move away from the source.

(7) During seismic survey operations, the ship's speed will be 4 to 5 knots so that when the airguns are being discharged, nearby marine mammals will have gradual warning of the ship's approach and can move away.

(8) The USGS plans to have marine biologists onboard the seismic vessel who will have the authority to stop airgun operations when a mammal enters the safety zone. These observers will monitor the safety zone to ensure no marine mammals enter the zone, and record observations on marine mammal abundance and behavior.

(9) Emergency shut-down. If observations are made that one or more marine mammals of any species are attempting to beach themselves when the seismic source is operating in the vicinity of the beaching, the airgun array will be immediately shut off and NMFS contacted.

(10) Upon notification by a local stranding network that a marine mammal has been found dead within the waters of Puget Sound, the San Juan Archipelago, or the Straits of Juan de Fuca when the array is operating within

that body of water, NMFS will investigate the stranding to determine whether a reasonable chance exists that the SHIPS project caused the animal's death. If NMFS determines, based upon a necropsy of the animal(s), that the death was likely due to the seismic source, the survey must cease until procedures are altered to eliminate the potential for future deaths.

Monitoring

The objectives of the proposed monitoring program will be: To mitigate potential harassment of marine mammals, to document the number of animals of each species present in the vicinity of the sound transmissions, and to evaluate the reactions of marine mammals to these transmissions. In addition, hydrophones will be used to measure sound levels, to correlate mammal behavior with actual, received sound levels. Focused surveys will be conducted in geographic areas of particular concern, especially for gray whales that migrate past the western entrance to the Straits of Juan de Fuca and other members of this species that spend the summer in the survey area (near south Whidbey Island and the Straits of Juan de Fuca), humpback whales near Swiftsure Bank and the waters west of the Straits, harbor porpoise that tend to congregate along western Whidbey Island and elsewhere, and minke whales that frequent shallow banks in the Strait of Juan de Fuca. All species of large whales (humpback, gray, minke, or killer whales) will be photographed to identify the individual using the area.

It should be recognized that, at this time, the monitoring program is unfunded and therefore may need to be modified in the future. However, in order for an IHA to be issued, monitoring will need to be conducted at a level which ensures that the activity will have no more than a negligible impact on marine mammal species or stocks.

Reporting

The USGS will provide an initial report to NMFS within 90 days of the completion of the 1998 phase of the marine seismic project. This report will provide dates and locations of seismic operations, details of marine mammal sightings, and estimates of the amount and nature of all takes by harassment. A final technical report will be provided by USGS within 1 year of completion of the 1998 phase of the Puget Sound marine seismic project. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of an incidental harassment authorization. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

National Environmental Policy Act

In conjunction with this notice, NMFS has released a draft EA that addresses the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. A copy of the draft EA is available upon request (see **ADDRESSES**).

Conclusions

NMFS has preliminarily determined that the short-term impact of conducting deep crustal marine seismic surveys will result, at worst, in a temporary modification in behavior by certain species of pinnipeds, and possibly some individual cetaceans. While behavioral modifications may be made by certain species of marine mammals to avoid the resultant noise from airgun arrays, this behavioral change is expected to have a negligible impact on the animals.

In addition, no take by injury and/or death is anticipated and takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned above. No known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization to the USGS for the possible harassment of small numbers of several species of marine mammals incidental to collecting deep-crustal marine seismic data in the Puget Sound/Straits of Juan de Fuca region of Washington State, provided the above-mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activities would result in the harassment of only small numbers of each of several species of marine mammals and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: September 11, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–24674 Filed 9–16–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090997E]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Sargassum and Water Column Habitat Sub-Group.

DATES: The meeting will be held on October 7-8 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 101 Pivers Island Road, Beaufort, NC.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

October 7, 1997, 1:30 p.m. to 5:00 p.m. & October 8, 1997, 8:30 a.m. to 12:30 p.m.

The Sub-Group will meet to review Sargassum habitat and water column information in state, Federal and regional systems, and to discuss fishing and non-fishing threats to these habitats. The Sub-Group will also discuss policy recommendations and research and monitoring needs for these habitats.

Although other issues not contained in this agenda may come before this Sub-Group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Sub-Group action during this meeting. Sub-Group action will be

restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 26, 1997.

Dated: September 10, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–24672 Filed 9–16–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082797D]

Marine Mammals; Permit No. 837 (P77–1#67)

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

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 837 submitted by The National Marine Mammal Laboratory, Alaska Fisheries Science Center, NMFS, NOAA, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668.

SUPPLEMENTARY INFORMATION: On July 15, 1997, notice was published in the **Federal Register** (62 FR 37885) that an amendment of permit no. 837, issued June 4, 1993 (58 FR 33085), had been requested by the above-named organization. The original permit authorized studies on northern fur seals (*Callorhinus ursinus*) over a five-year period on rookeries in the Bering Sea and eastern North Pacific Ocean. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit was amended to authorize the following increased takings of northern fur seals (*Callorhinus ursinus*): 1) extend shear marking activities authorized in sections A.1 and A.2 to Bogoslof Island; 2) blood sampling of up to 40 pups of the 300 pups authorized in A.3 to be captured and tagged on San Miguel; 3) tissue sampling (i.e., hair, skin, blubber, muscle and liver) of up to 120 already deceased juvenile male seals (60 on St. Paul, 60 on St. George); and 4) capture and recapture of up to 20 adult female seals on Bogoslof Island to study foraging behavior. Each seal will be instrumented with a satellite tag and/or time-depth recorder and VHF transmitter via 5–minute epoxy glue; flipper tagged, weighed, measured, and released. At recapture, the instruments will be removed and the animals will be weighed, measured, administered an enema and released. Some of these seals may be sedated with Valium. At each capture, the seal will be given an intramuscular injection of oxytocin and milk sampled. Up to 2,000 pups and 2,000 non-pups may be incidentally harassed during the course of these activities.

Dated: September 5, 1997.

Ann D. Terbush

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–24641 Filed 9–16–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090997B]

Marine Mammals; Permit No. 970 (P557E)

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

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 970 submitted by Scripps Institution of Oceanography, Acoustic Thermometry of Ocean Climate Project, Institute for Geophysics and Planetary Physics, 9500 Gilman Drive, La Jolla, California 92093–02252, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Protected Species Program Manager, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

This amendment incorporates into Permit No. 970 refinements to the research protocol, as provided for by Special Condition A.8. of Permit 970.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 11, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–24642 Filed 9–16–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082897F]

Marine Mammals; Permit No. 917 (File No. P774#2)

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

ACTION: Receipt of application to amend permit No. 917 (File No. p774#2).

SUMMARY: Notice is hereby given that Dr. John B. Pearce, NMFS, Northeast Fisheries Science Center, 166 Waters Street, Room 312, Woods Hole, MA 02543–1097, has requested an amendment to permit no. 917.

DATES: Written or telefaxed comments must be received on or before October 17, 1997.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, (508) 281–9250.

Written comments or requests for a public hearing on this petition should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject amendment to permit no. 917, issued on May 11, 1994 (59 FR 25892) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Permit No. 917 authorizes the permit holder to conduct a number of studies on several cetacean species as well as gray and harbor seals in the northeastern U.S. and Canadian waters. The research activities include: Vessel surveys, aerial surveys and photogrammetry, photo-identification studies, and the collection of biopsies. The permit holder now requests authorization to: increase the number of biopsy samples collected from humpback whales (*Megaptera novaeangliae*), common dolphins (*Delphinus delphis*), Atlantic white-sided dolphins (*Lagenorhynchus acutus*), bottlenose dolphins (offshore stock, *Tursiops truncatus*), and striped dolphins (*Stenella coeruleoalba*). The permittee is currently authorized to collect 25 biopsies from each species, and requests to increase the number to 50 samples for humpback whales and to 100 samples for the pelagic dolphins listed above.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 10, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–24643 Filed 9–16–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Spectrum Planning and Policy Advisory Committee (SPAC) Meeting

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix, notice is hereby given that the Spectrum Planning and Policy Advisory Committee (SPAC) will meet on September 26, 1997 from 9:30 a.m. to 4:30 p.m. in Room 1605 at the United States Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C.

The Committee was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, and in July, 1993, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Discussion of the SPAC Report of Spectrum Reallocation;

(2) Future Spectrum Policy and Long Range Planning;

(3) Summary of new radiation exposure legislation; and

(4) Public Safety Wireless Advisory Committee (PSWAC) update.

The meeting will be open to public observation. Public entrance to the building through the main entrance is on 14th Street midway between Pennsylvania Avenue and Constitution Avenue. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before September 17, 1997. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Federal Information Relay Service (FIPS) on 1–800–877–8339.

Copies of the minutes will be available upon request 30 days after the meeting.

FOR FURTHER INFORMATION, CONTACT: Inquires may be addressed to the Executive Secretary, SPAC, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, Room 4082, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202–482–4487.

Dated: September 11, 1997.

Richard A. Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 97–24608 Filed 9–16–97; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Performance Review Board

AGENCY: Department of Commerce, Patent and Trademark Office.

ACTION: Announcement of Membership of the Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Comments should be addressed to Director, Office of Human Resources, Patent and Trademark Office, One Crystal Park, Suite 707, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Alethea Long-Green at the above address or telephone (703) 305–8062.

SUPPLEMENTARY INFORMATION: The new membership of the Patent and Trademark Office Performance Review Board is as follows:

Gloria Gutiérrez, Chairman, Acting Deputy Associate Commissioner for Administration and Quality Services, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1999

Mary C. Lee, Deputy Director, Patent Examining Group, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1999

Jin F. Ng, Deputy Director, Patent Examining Group, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1998

Barbara S. Fredericks, Assistant General Counsel, Department of Commerce, Washington, DC 20230, Term—expires September 30, 1999

Robert M. Anderson, Deputy Assistant Commissioner for Trademarks, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1999

Gerald R. Lucas, Director, Eastern Administrative Support Center, Department of Commerce, Norfolk, VA 23510, Term—expires September 30, 1999

Robert F. Kugelman, Director of Administration, Bureau of Export Administration, Department of Commerce, Washington, DC 20230, Term—expires September 30, 1999

E. Melodee Stith, Director, Office for Equal Opportunity, Department of the Interior, Washington, DC 20240, Term—expires September 30, 1999.

Dated: September 10, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–24698 Filed 9–16–97; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Programmatic Environmental Assessment (FPEA) and Finding of No Significant Impact (FNSI) for the Joint Vaccine Acquisition Program (JVAP)

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability for public review and comment of an FPEA and FNSI 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 harm's way. The JVAP is implemented by the Department of Defense through the Joint Program Office for Biological Defense for which the Army is the lead agency. The JVAP FPEA characterizes and assesses the possible and probable environmental consequences associated with the JVAP as proposed and the alternatives considered. The FPEA 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 FPEA/FNSI is available for public review and comment. Mr. Bruce G. Kay is the Department of the Army clearinghouse for requests for the JVAP FPEA and documentation from previous environmental analyses referenced in the FPEA. The JVAP FPEA documentation with supporting reports is available through the internet at http://www.armymedicine.army.mil/jvap-fpea. Written comments regarding the FPEA/FNSI should be submitted to the address provided below.

DATES: Comments must be submitted on or before October 17, 1997.

ADDRESSES: Mail comments or document copy requests to: Joint Vaccine Acquisition Project Management Office, ATTN: Mr. Bruce Kay, 568 Doughten Drive, Suite 100, Fort Detrick, Maryland 21702–5040; phone at (301) 619–2016; or fax at (301) 619–7230; e-mail: bruce__g__kay@ftdetrck-ccmail.army.mil.

Dated: September 11, 1997.

James P. Huber,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 97–24647 Filed 9–16–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of Composite Material Properties Data From Exclusive, Partially Exclusive or Non-exclusive Licenses

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to composite materials properties data produced by the U.S. Army Research Laboratory. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg 434, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–24587 Filed 9–16–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of an Environmental Assessment and Finding of No Significant Impact for the Disposal of U.S. Navy Submarine Solid Waste

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act

(NEPA) of 1969, the Council on Environmental Quality regulations implementing NEPA procedures (40 CFR Parts 1500–1508), and Executive Order (EO) 12114 ''Environmental Effects Abroad of Major Federal Actions,'' the Department of the Navy gives notice that an Environmental Assessment (EA) has been prepared and an Environmental Impact Statement is not required for the disposal of non-hazardous biodegradable solid waste (paper, cardboard and food), and non-hazardous non-biodegradable solid wastes (metal and glass) from U.S. Navy submarines.

The provisions of NEPA apply to federal actions that occur in the United States and within the contiguous territorial sea. The provisions of EO 12114 apply to major federal actions that occur beyond the territorial seas of the United States, in the global commons, or within the jurisdiction of a foreign government.

Background

The Navy is developing a Submarine Solid Waste Management Plan in response to the National Defense Authorization Act for Fiscal Year 1994 which required the Secretary of the Navy to submit to Congress, no later than November 30, 1996, a plan for compliance by Navy ships with Regulation 5 of Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL), which pertains to disposal of shipboard solid waste in ''special areas.'' The Navy submitted a Special Areas Compliance Report for Surface Ships by the November 30, 1996 deadline. That report, however, did not address submarine solid waste management in detail, because, at that time, the Navy was still evaluating options for addressing submarine solid waste.

The MARPOL Convention, formulated in 1973 and amended in 1978, contains five annexes, each dealing with a particular type of discharge. Solid waste is addressed in Annex V, ''Regulations for the Prevention of Pollution by Garbage from Ships.'' MARPOL prohibits some discharges altogether, restricts some discharges to particular distances from land, and establishes ''special areas'' within which additional discharge limitations apply, based on the oceanographic characteristics and ecological significance of those areas.

Eight ''special areas'' have been designated by Annex V: the Baltic Sea, portions of the North Sea, the Antarctic Area, the Red Sea, the Black Sea, the Gulf area (including the Persian Gulf and the Gulf of Aden), the wider Caribbean (including the Gulf of Mexico), and the Mediterranean Sea. To date, only the first three are ''in effect'' based on an assessment of the waste management capabilities of each area's littoral countries.

The MARPOL Convention limitations on ocean discharges do not expressly apply to warships or naval auxiliaries. It does require, however, that signature countries ensure their warships and auxiliaries operate consistent with the Convention so far as is ''reasonable and practicable.''

The United States became a signatory to MARPOL Annex V in 1987 and enacted implementing laws by amending the Act to Prevent Pollution from Ships (APPS). In the 1987 amendment (known as the Marine Plastic Pollution Research and Control Act), Congress did not adopt the Convention's ''reasonable and practicable'' requirement for U.S. warships, but instead affirmatively required full compliance by U.S. Navy vessels with all Annex V requirements by 1994. In 1993, the National Defense Authorization Act for Fiscal Year 1994 (DAA 94) allowed the Navy to petition Congress for relief from the legislatively imposed requirements of Annex V, if the Navy demonstrated that full compliance for U.S. warships and auxiliaries may not be technologically feasible while maintaining the necessary level of operational capability.

The DAA 94 also provided that, if the plan demonstrates that compliance by certain ships (submarines included) under certain conditions is not technologically feasible, Congress may modify the applicability of the special area requirements for Navy warships and auxiliaries.

The development of a management plan for the disposal of submarine solid waste must incorporate the unique nature of warships, a fact recognized by MARPOL. Submarine characteristics and operations are significantly different from surface ships, necessitating a different approach to solid waste management. As space in submarines is highly constrained, historic emphasis on solid waste management for the submarine fleet has been on source reduction. Crews work hard to conserve limited storage space by minimizing the amount of plastic and paper material brought on-board, a practice which in turn, minimizes the amount of waste generated at sea.

Submarine design characteristics including critical space, weight, shock, acoustic and atmospheric control constraints, and operations are significantly different from surface ships, so much so that operational and technological opportunities for submarine solid waste management are far fewer than for surface ships. Factors in developing a submarine solid waste management strategy include the operation and deployment of the submarine fleet, storage space aboard ship, the totally self-contained atmosphere of the vessel while submerged, waste generation rates and characteristics, and current Navy solid waste management policies and practices.

Proposed Action and Alternatives

After careful analysis of several alternatives and their associated impacts, the proposed action for solid waste management for U.S. Navy submarines involves a three-pronged approach: (1) for food wastes, garbage grinders would be installed on submarines to grind food waste for disposal (to virtually eliminate the need for discharging plastic wet bags, so called because ''wet'' food wastes are placed in disposal bags), while non-grindable food wastes would be discharged via the Trash Disposal Unit (TDU) in non-plastic wet bags or containers; (2) the discharge of all plastics from submarines will be eliminated by December 31, 2008 through source reduction, use of new non-plastic wet bags (currently under development), and compaction technology to facilitate ease of on-board storage using the very limited space available for that purpose; and (3) the discharge of all other non-hazardous components of the submarine solid waste stream (paper, cardboard, metal and glass) via the TDU. Discharge of solid waste from submarines would occur world-wide under the proposed action, but would be limited by ''distance from shore'' criteria, e.g., greater than 25 nm from shore or between 12 nm and 25 nm only when water depths are 6,000 feet or greater.

Implementation of this proposed action will benefit the environment by retaining all plastic waste for shore disposal and grinding food waste, which will reduce the requirement for discharging wet bags and associated iron weights, and results in submarine operational, environment and quality of life improvements.

Alternatives Considered and Rejected

No At-Sea Discharge in Special Areas Alternative

This alternative was rejected because submarines are not designed to accommodate solid waste storage, do not utilize underway transfers or replenishments, and cannot be modified

to provide adequate waste storage space. Routinely storing waste on-board would adversely impact mission accomplishment, ability to recover from emergencies, and crew's health, welfare, and quality of life.

Pulp and Shred Alternative

This alternative would involve the installation of pulpers to process cardboard and paper into a non-floating slurry and shredders to process (shred) metal and glass. The paper and cardboard slurry would be discharged into the submarine's sanitary tank for subsequent release to the ocean, while the shredded metal and glass would be discharged via the TDU. This alternative was rejected because equipment installation would use space for mission-essential equipment and crew berthing. This would adversely impact mission accomplishment, with no offsetting increase in environmental benefit.

Use of Extended-Life TDU Cans

This alternative would involve the use of TDU cans made of less corrodible material (than in current use) allowing the TDU can to remain intact and be silted over on the ocean floor. This alternative was rejected because use of alternative materials for extended life TDU cans would represent a significant increase in cost to the Navy without producing an increase in environmental benefit.

On-Board Destruction

This alternative focused on technologies that would result in the destruction of wastes aboard the submarine. On-board destruction was rejected because of the limited and confined space on submarines to install this equipment and the inability to exhaust resultant fumes and gases while submerged.

No Action Alternative

The current waste management practices for submarines (assumed as the no action alternative) adhere to stipulated minimum distances where solid waste may be discharged from land, and the forms in which various types of solid waste may be discharged within those defined distances. Compacted solid waste is currently discharged from submarines in cans utilizing the TDU. The Navy has implemented plastics waste discharge management measures which include limiting discharges to the minimum amount practicable and retaining plastics on-board while the submarine is less than 50 nautical miles (nm) from shore. The continuation of current practices was rejected because it lacks the environmental benefits of retaining plastic material for shore disposal, and does not take advantage of the operational, environmental, and quality of life benefits resulting from the grinding of food waste.

Impacts of the Proposed Action

Under the proposed action, cardboard, paper, metal and glass would continue to be discharged utilizing the TDU; plastics would be stored on-board for disposal/recycling on shore; and food wastes would be processed through a garbage grinder and discharged.

The discharge of these wastes in MARPOL Special Areas and/or the oceans of the world will not significantly impact the plants, animals, or environment of these areas. With regard to plastic wastes, the proposed action would have a positive impact globally because all plastics will be retained for shore disposal. Further, plastics retention would reduce the weight of solid wastes discharged by approximately 15 percent.

The proposed action similarly would not have a significant impact on the submarine environment. Management of cardboard, paper, metal and glass solid waste by discharge through the TDU is a continuation of waste management practices that are inherent in the way submarines were designed to manage these solid waste streams; as such, the proposed action (which includes the retention onboard of plastic waste) represents a minor change in the waste management practices aboard submarines and would not impact the submarine environment. However, there would be some limited impact on stowage space aboard the submarine and crew quality of life because of the retention of all plastics. The addition of garbage grinders, on submarines not currently equipped with them, will provide submarines with a more efficient means of disposing of food waste, virtually eliminating the use of wet bags and the associated TDU weights, and enhance the quality of life of the crew.

Implementation of the proposed action will have some minor shoreside impacts with respect to on-shore waste disposal capacity and costs because of the need to manage additional plastic wastes retained on submarines for shore disposal.

The discharge of non-hazardous, non-plastic, negatively buoyant compacted solid waste via the TDU will have no associated cumulative impacts to the marine environment. From a basin-wide perspective, the discharge of submarine solid waste should have no adverse environmental impact.

It is not expected that the proposed action will have any adverse effects on threatened and endangered species. The distance that waste is discharged from shore, extremely low spatial density of the TDU cans on the sea floor, the short time span in the water column (TDU cans sink rapidly to the bottom), and the tendency of the threatened or endangered species to congregate in shallow water near coastlines, will minimize exposure of the TDU cans and their contents to these species.

It is not expected that the proposed action will have any adverse impacts on coral reefs. Submarines usually operate in the vicinity of coral reefs only when transiting into or out of port. By Navy policy, submarines discharge TDU cans beyond 25 nm from land, or between 12 nm and 25 nm only when the depth of water is 6,000 feet or greater, where coral reefs are unlikely to be found.

The proposed action does not comply with the Special Area discharge provisions of APPS, and an amendment would be necessary to implement the proposed action.

EO 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations) directs that all federal departments and agencies make achieving environmental justice part of their mission. The proposed action will not cause disproportionate adverse environmental or health impacts specific to any group or individual from minority or low-income populations.

Based on information gathered during the preparation of the EA, the Navy finds that implementation of the proposed action will not result in significant adverse impacts to the environment.

FOR FURTHER INFORMATION: The EA addressing this action may be obtained from: Commanding Officer, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, MS 82, Lester, PA 19113–2090 (Attn: Mr. Robert Ostermueller, Code 202, telephone 610–595–0759). A limited number of copies of the EA are available to fill single copy requests.

Dated: September 9, 1997.

Thomas J. Peeling,

Special Assistant for Environmental Planning, Environmental Protection, Safety, and Occupational Health Division, Deputy Chief of Naval Operations (Logistics).

[FR Doc. 97–24719 Filed 9–16–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of a Draft Plan for U.S. Navy Submarine Solid Waste Management for MARPOL Annex V Special Areas, an Addendum to the Report to Congress on U.S. Navy Ship Solid Waste Management Plan for MARPOL Annex V Special Areas of November 1996

SUMMARY: The Department of the Navy (DON) announces the availability of a document providing the proposed management plan for solid waste aboard Navy submarines. This document discusses the results of studies designed to determine the practicability of various options for solid waste management aboard submarines pursuant to the International Convention for the Prevention of Pollution from Ships (MARPOL), Annex V Special Areas, as required by the Act to Prevent Pollution from Ships. As an addendum report to the U.S. Navy's November 1996 Report to Congress, ''U.S. Navy Ship Solid Waste Management Plan for MARPOL Annex V Special Areas,'' this document provides additional information on submarines that was not previously available.

Copies of the U.S. Navy Submarine Solid Waste Management Plan for MARPOL Annex V Special Areas may be obtained from, and written comments on the Plan may be submitted to, Mr. Cartwright at the address provided below.

DATES: Written comments on the Plan will be considered if received by October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. David Cartwright NAVSEA 92TE, Assistant for Submarine Environmental and Occupational Safety Affairs, Department of the Navy, Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160 [(703) 602–8096 (Ext. 475)].

SUPPLEMENTARY INFORMATION: The U.S. Navy Submarine Solid Waste Management Plan is being prepared pursuant to Section 1003(c)(2) of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, codified at 33 U.S.C. 1902(2)–(4). That statute required the Secretary of the Navy to submit, by 30 November 1996, a plan for compliance by all ships owned or operated by the DON with the requirements of regulation 5 of Annex V of MARPOL. The Navy's 1996 report stated that an addendum would be prepared for submaine solid waste management. MARPOL establishes rules pertaining to the discharge of shipboard solid waste from vessels operating in designated ''special areas'' of the world, of which three are currently in effect: the Baltic Sea, the North Sea and the Antarctic Region.

The development of the U.S. Navy Submarine Solid Waste Management Plan has been coordinated with the public through meetings held in September, 1994, and March, 1997; with the Department of State, Department of Commerce, Environmental Protection Agency, U.S. Coast Guard, and other Federal agencies. A Notice of a Finding of No Significant Impact, resulting from an Environmental Assessment on the Plan, appears in this **Federal Register**.

The Submarine Solid Waste Management Plan addresses six solid waste management options. The proposed action is: the discharge of non-plastic, non-hazardous, negatively buoyant, compacted solid waste, other than grindable food wastes in special areas beyond 25 nautical miles (nm) from land, or between 12nm and 25nm only when the depth of water is greater than 6,000 feet; use of source reduction, non-plastic ''wet bags,'' and compaction technology, which will enable submarines to retain all plastics for shore disposal by December 31, 2008; and processing food wastes through a garbage grinder and discharging the wastes greater than 3nm from land. Implementation of the proposed action satisfies MARPOL's ''reasonable and practicable'' standard for warships, but will require an amendment to the Act to Prevent Pollution from Ships to allow the discharge of compacted, negatively buoyant, non-plastic solid wastes by submarines in Special Areas.

Dated: September 12, 1997.

Darse E. Crandall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–24718 Filed 9–16–97; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, September 24, 1997. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 9:30 a.m. at the same location and will open with a presentation and discussion of the results of the Commission's recently completed Delaware River Basin Commission Survey to Assess its Management of the Basin's Water Resources. The survey results are also available by calling (609) 883–9500 ext. 215 and leaving your name and address, or may be downloaded from the Commission's web site at: http://www.state.nj.us/drbc/drbc.htm. The conference will also include a presentation on the New Jersey State Development and Redevelopment Plan's cross-acceptance process and a discussion of depletive water use above Commission reservoirs.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Town of Middletown-Arkville Water District D–86–77 CP RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 4.5 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 3 and 4. Commission approval on August 12, 1992 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 4.5 mg/30 days. The project is located in the Town of Middletown, Delaware County, New York.

2. *Playtex Family Products Corporation D–90–106 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to12 mg/30 days of water to the applicant's product processing facility from Well Nos. 1–NE and 2–SE. Commission approval on May 20, 1992 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 12 mg/30 days. The project is located in the City of Dover, Kent County, Delaware.

3. *Montague Water Company D–91–75 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 8.0 mg/30 days of water to the applicant's distribution system from Well Nos. 1 through 5. Commission approval on March 25, 1992 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 8.0 mg/30 days. The project is located in Montague Township, Sussex County, New Jersey.

4. *Hewlett-Packard Company D–97–15 (D).* An application for the discharge of wastewater resulting from a ground

water remediation project. An average 0.144 million gallons per day (mgd) of contaminated ground water will be treated and discharged to an unnamed tributary of Egypt Run, a tributary of East Branch White Clay Creek, in New Garden Township, Chester County, Pennsylvania. Five recovery wells will collect ground water for treatment for removal of volatile organic compounds via an air stripper and filtration units. The project will serve only the site of the applicant's former electronic instrumentation operations located at Route 41 and Starr Road in New Garden Township.

5. *Hewlett-Packard Company D–97–15 (G).* An application for approval of a ground water withdrawal project to withdraw up to 2.27 mg/30 days of water as part of the applicant's ground water remediation system from new Well Nos. MW–32, MW–33, MW–34, MW–37, RW–4, RW–5, P–2, P–3 and P–4; and to limit the withdrawal from all remediation wells to 4.43 mg/30 days. The project is located in New Garden Township, Chester County, Pennsylvania.

6. *The Upper Hanover Authority D–97–17 CP.* An application for approval of a ground water withdrawal project to supply up to 4.5 mg/30 days of water to the applicant's distribution system from new Well No. RH–3, and to retain the existing withdrawal limit from all wells of 22.4 mg/30 days. The project is located in Upper Hanover Township, Montgomery County and Hereford Township, Berks County, in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Township of Worcester D–97–22 CP.* An application to expand the applicant's Berwick Place sewage treatment plant (STP) average monthly capacity from 0.06 mgd to 0.15 mgd. The STP will continue to provide tertiary treatment to serve residential development in a portion of Worcester Township and discharge via the existing outfall to an unnamed tributary of Skippack Creek. The STP is located just south of Germantown Pike and east of East Mount Kirk Avenue in Worcester Township, Montgomery County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: September 9, 1997.

Anne M. Zamonski,

Acting Secretary.

[FR Doc. 97–24655 Filed 9–16–97; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–725–000]

CNG Transmission Corporation; Notice of Application

September 11, 1997.

Take notice that on September 5, 1997, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP–97–725–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its case-specific authorization to provide storage services under CNG' Rate Schedule GSS–II to Colonial Gas Company (Colonial), effective as of September 1, 1997, all as more fully set forth in the application on file with the Commission and open to public inspection.

CNG asserts that it has replaced the services for which CNG seeks abandonment authorization with services to Colonial of like demand and capacity, under CNG's blanket authorization provided by Part 284 of the Commission's Regulations.

Any person desiring to be heard or to make protest with reference to said application should on or before October 2, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24614 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP 92–154–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

September 11, 1997.

Take notice that on September 8, 1997, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 369 to be effective October 15, 1997.

CIG states that Sheet No. 369 was a tariff sheet authorized by Commission Order issued May 14, 1992 in Docket No. RP92–154–000. The tariff sheet identified customers' buyout-buydown obligation pursuant to Order No. 528.

CIG states the filing is being made to ''clean up'' Sheet No. 369. One Buyer had elected to amortize its payment of its obligation over a 60-month period. The 60-month payment period has terminated and the Buyer has paid its obligation; therefore, the filing reflects all Buyers have now paid their obligation pursuant to the authorization in Docket No. RP92–154–000.

CIG states that copies of the filing have been sent to all parties in Docket No. RP92–154–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 in accordance with the § 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with § 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 the protestants parties to the proceedings. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24621 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3667–000]

Columbia Power Marketing Corporation; Notice of Issuance of Order

September 12, 1997.

Columbia Power Marketing Corporation (CPMC) submitted for filing a rate schedule under which CPMC will engage in wholesale electric power and energy transactions as a marketer. CPMC also requested waiver of various Commission regulations. In particular, CPMC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by CPMC.

On September 3, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CPMC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, CPMC is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CPMC's issuances of securities of assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 3, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24688 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–300–002]

Dauphin Island Gathering Partners; Notice of Filing of Original FERC Gas Tariff

September 11, 1997.

Take notice that on September 2, 1997, Dauphin Island Gathering Partners (DIGP) tendered for filing its FERC Gas Tariff, Original Volume No. 1, to become effective October 1, 1997. DIGP states that the filing is in compliance with the Director of OPR's July 24, 1997, letter order in Docket No. CP97–300–000, *et al.* and the Commission's June 27th order in Docket No. CP97–300–000, *et al.* 79 FERC ¶61,391 (1997). (June 27th order).

DIGP states that the tariff sheets incorporate both the jurisdictional changes and the change of rates reflecting a 13.25 percent return on equity ordered by the June 27th order. DIGP explains that the tariff sheets also include Commission-ordered changes to both the rate schedules and the general terms and conditions of the tariff. Further, DIGP says the tariff sheets reflect DIGP's compliance with the provisions of Order No. 587, which requires each jurisdictional natural gas pipeline to incorporate into its tariff the business standards and practices issued by the Gas Industry Standards Board. Finally, DIGP's tariff sheets include corrections to miscellaneous drafting errors that were not discovered until after DIGP filed its pro forma tariff as a part of its March 21, 1997, conditional certificate application, which corrections are necessary, however, to maintain conformity throughout the tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 19, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 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 in any proceeding herein must file a motion to intervene in accordance with the Commission's rules. 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. 97–24612 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3745–000]

EnergyEXPRESS, Inc.; Notice of Issuance of Order

September 11, 1997.

EnergyEXPRESS, Inc. (EnergyEXPRESS) submitted for filing a rate schedule under which EnergyEXPRESS will engage in wholesale electric power and energy transactions as a marketer. EnergyEXPRESS also requested waiver of various Commission regulations. In particular, EnergyEXPRESS requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by EnergyEXPRESS.

On August 26, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EnergyEXPRESS, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing with this period, EnergyEXPRESS is authorized to

issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EnergyEXPRESS's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 25, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24616 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3815–000]

Friendly Power Company LLC; Notice of Issuance of Order

September 11, 1997.

Friendly Power Company LLC (Friendly) submitted for filing a rate schedule under which Friendly will engage in wholesale electric power and energy transactions as a marketer. Friendly also requested waiver of various Commission regulations. In particular, Friendly requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Friendly.

On September 4, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protests the blanket approval of issuance of securities or assumptions of liability by Friendly should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Friendly is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary of appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Friendly's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 6, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24617 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3666–000]

GPU Advanced Resources, Inc; Notice of Issuance of Order

September 12, 1997.

GPU Advanced Resources, Inc. (Advanced Resources) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Advanced Resources requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Advanced Resources. On September 4, 1997, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 4, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Advanced Resources should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Advanced Resources is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Advanced Resources, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Advanced Resources' issuances of securities or assumptions of liabilities.

* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 6, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24687 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–724–000]

NorAm Gas Transmission Company; Notice of Application

September 11, 1997.

Take notice that on September 3, 1997, NorAm Gas Transmission Company (NGT) 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP97–724–000 an application, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to construct, modify, or abandon certain pipeline and measurement facilities all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, NGT proposes to: (1) replace approximately 61.2 miles of 20-inch dresser-coupled pipe with standard 20-inch dresser-coupled pipe with standard 20-inch welded steel pipe, including a minor re-route at NGT's Ruston Compressor Station (Ruston); (2) reclassify an 8.2 mile segment of Line F as a low pressure gas supply line; (3) install minor yard and station piping at NGT's Buckley Compressor Station; existing pipeline (NGT indicates that no service will be interrupted or abandoned as a result of abandoning these taps); (6) replace and relocate 36 active taps on Line F; (7) abandon 33 inactive delivery tape; and (8) install minor yard and station piping at Ruston. NGT estimates that the cost of the proposed project is approximately $32.3 million.

NGT explains that because of the engineering advancements inherent in modern 20-inch welded steel pipe, Line F will be able to operate at a higher pressure resulting in increased capacity totaling 170,000 MMBtu per day. NGT states that it has entered into three precedent agreements for transportation using Line F capacity that obligate shippers to multi-year commitments totaling 115,000 MMBtu. NGT claims that the discounted and negotiated rates bargained for between NGT and the precedent agreement shippers are required to meet NGT's competition.

NGT requests advanced determination under the Commission's pricing policy statement that the cost of this project will qualify for rolled-in rate treatment when NGT files its next Section 4 rate case. NGT asserts that its proposed upgrade will provide specific system benefits, such as increased system flexibility and improved reliability, that are proportionate to or greater than the rate impact of rolling-in the cost of the facilities. NGT states that it has conducted an analysis that demonstrates that the impact of rolling-in the Line F upgrade costs will be less than 5 percent.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before October 2, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the 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.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NGT to appear to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24613 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–726–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

September 11, 1997.

Take notice that on September 5, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP97–726–000 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 5 small volume measuring stations under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that it requests authority to abandon 5 small volume measuring stations located in Minnesota and Nebraska. Northern further asserts that end-users have requested the removal of these measuring stations from their property.

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. 97–24615 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–37–001]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 11, 1997.

Take notice that on September 8, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective October 1, 1997:

Third Revised Volume No. 1

Substitute Twelfth Revised Sheet No. 5

Original Volume No. 2

Substitute Twenty-Second Revised Sheet No. 2.2

Northwest states that the purpose of this filing is to update Northwest's tariff to reflect the Annual Charge Adjustment (ACA) factor to be effective for the twelve-month period beginning October 1, 1997. Northwest states that its new ACA factor will be 0.22¢ per Dth, an increase of 0.02¢ per Dth from its current ACA factor.

Northwest states that on August 18, 1997 it submitted a tariff filing in Docket No. TM98–1–37–000 to reflect a 0.21¢ per Dth ACA factor to be effective for the twelve-month period beginning October 1, 1997. The 0.21¢ per Dth factor was based on the Commission's August 1, 1997 Statement of Annual Charges. However, on August 20, 1997, the Commission issued a correction of the ACA unit charge from 0.21¢ per Dth to 0.22¢ per Dth. Accordingly, Northwest states that it is requesting to withdraw its August 18, 1997 filing and is submitting the instant filing to reflect the revised ACA factor.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24624 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–67–000]

Pacific Interstate Transmission Company; Notice of Compliance Filing

September 11, 1997.

Take notice that on September 9, 1997, Pacific Interstate Transmission Company (PITCO) submitted its restated tariff in electronic format in compliance with Order No. 582 (60 Fed. Reg. 52,960) and the Commission's letter of August 14, 1997.

PITCO states that, in its restated tariff, it has revised each sheet only to reflect a re-issuance date of October 1, 1997 and that it has revised Original Sheet No. 202, ''Exhibit A to Service Agreement,'' to correct its address. PITCO states that hard copies of the filing were served on its sole firm customer, Southern California Gas Company, and on the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24619 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–115–001]

Sumas International Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 11, 1997.

Take notice that on August 29, 1997, Sumas International Pipeline Inc. (Sumas) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, to become effective October 1, 1997:

Substitute Seventh Revised Sheet No. 4

Sumas states that the purpose of this filling is to update Sumas' tariff to reflect the Annual Charge Adjustment (ACA) factor to be effective for the twelve-month period beginning October 1, 1997. Sumas states that its new ACA factor will be 0.22¢ per Dth, and increase of 0.02¢ per Dth from its current ACA factor.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 pubic inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24625 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–519–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

September 11, 1997.

Take notice that on September 9, 1997, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of October 9, 1997:

Second Revised Sheet No. 351A

Second Revised Sheet No. 352
First Revised Sheet No. 518
First Revised Sheet No. 519
Second Revised Sheet No. 524
Second Revised Sheet No. 525
Original Sheet No. 676
Original Sheet No. 677

Tennessee states that it is submitting these revised tariff sheets in order to provide additional flexibility to its customers by allowing agency agreements under each of its rate schedules and allowing for an additional agency agreement for Electronic Data Interchange. Tennessee also proposes to revise the tariff sheets to update its agency tariff provisions and to correct certain minor misstatements.

Any person desiring to be hard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR Sections 385.211 and 385.214 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 this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24623 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4514–000]

Tucson Electric Power Company; Notice of Filing

September 11, 1997.

Take notice that on September 5, 1997, on Electric Power Company (TEP) filed its proposed Market Rate Tariff. The proposed tariff would allow TEP to sell capacity and energy to eligible customers at market-based rates.

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 and protests should be filed on or before September 22, 1997 and must be served on TEP. 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 persons 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. 97–24618 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–515–000]

Western Gas Interstate Company; Notice of Proposed Changes In FERC Gas Tariff

September 11, 1997.

Take notice that on September 5, 1997, Western Gas Interstate Company (WGI) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 239, with an effective date of September 25, 1997.

WGI states that the purpose of this filing is to comply with the Commission's Order No. 636–C, 78 FERC ¶ 61,186 (1997), which required pipelines with a right-of-first-refusal tariff provision containing a contract term cap longer than five years to revise their tariffs consistent with the revised cap of five years adopted in Order No. 636–C.

WGI states that copies of the filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR Sections 385.211 and 385.214 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 this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24622 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4235–000, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

September 10, 1997.

Take notice that the following filings have been made with the Commission:

1. San Diego Gas & Electric Company

[Docket No. ER97–4235–000]

Take notice that on August 18, 1997, San Diego Gas & Electric Company (SDG&E), tendered for filing an open access distribution tariff pursuant to 18 CFR 35.28(c).

Copies of this filing have been served upon the California Public Utilities Commission, and all other parties in the combined service lists in Dockets EC96–19–000 and ER96–1663–000.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER97–4278–000]

Take notice that on August 20, 1997, PECO Energy Company (PECO), filed a Service Agreement dated July 30, 1997 with Reedy Creek Improvement District (REEDY CREEK) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds REEDY CREEK as a customer under the Tariff.

PECO requests an effective date of July 30, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to REEDY CREEK and to the Pennsylvania Public Utility Commission.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Central Louisiana Electric Company, Inc.

[Docket No. ER97–4279–000]

Take notice that on August 19, 1997, Central Louisiana Electric Company, Inc., tendered for filing Central Louisiana's Market Based Rate Tariff MR–1, the quarterly reports for

transactions undertaken by Central Louisiana are as follows:

Quarter ending 12/31/96—No Transactions
Quarter ending 3/31/97—No Transactions
Quarter ending 6/30/97—No Transactions

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER97–4280–000]

Take notice that on August 20, 1997, Montaup Electric Company (Montaup), tendered for filing four agreements relating to transmission and subtransmission service for the Massachusetts Bay Transportation Authority. Montaup requests that the agreements become effective on October 1, 1997, when the service is scheduled to commence.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. NRG Power Marketing Inc.

[Docket No. ER97–4281–000]

Take notice that on August 20, 1997, NRG Power Marketing Inc. (NRG Power) filed pursuant to 205 of the Federal Power Act, Part 35 of the Commission's Regulations, and the Commission's Rules of Practice and Procedure, an application requesting the Commission to: (1) accept for filing NRG Power's Rate Schedule FERC No. 1, (2) grant NRG Power blanket authority to make market-based sales of energy and capacity under Rate Schedule FERC No. 1, and (3) grant NRG Power such waivers and blanket authorizations as have been granted by the Commission in the past to other power marketers, including, but not limited to, waiver of cost of service filing requirements of Subparts B and C of Part 35, waiver of accounting and reporting requirements, interlocking director filing requirements, and blanket approval of future issuances of securities or assumptions of obligations or liabilities. NRG Power has requested waiver of the 60-day notice requirement to allow NRG Power's Rate Schedule FERC No. 1 to become effective on September 1, 1997.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER97–4282–000]

Take notice that on August 20, 1997, Commonwealth Edison Company (ComEd) submitted for filing six Service Agreements, establishing United Power Association (UPA), Oglethorpe Power Corporation (OPC), The Energy Authority, Inc. (TEA), Constellation Power Source, Inc. (CPS), Market Responsive Energy, Inc. (MREI), and Entergy Services, Inc. (ESI), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). ComEd also submitted a revised Index of Customers reflecting the six new customers and name changes for current customers, Koch Power Services, Inc., LG&E Power Marketing, Inc., Eastex Energy, Inc., Citizens Power and Light Corporation, and Coastal Electric Services Company. The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of July 24, 1997, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon UPA, OPC, TEA, CPS, MREI, ESI, Koch Energy Trading, Inc., LG&E Energy Marketing, Inc., El Paso Energy Marketing Company, Citizens Power Sales, Engage Energy US, L.P., and the Illinois Commerce Commission.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Alabama Power Company

[Docket No. ER97–4283–000]

Take notice that on August 20, 1997, Southern Company Services, Inc., as agent for Alabama Power Company (APCo), tendered for filing a Transmission Service Delivery Point Agreement dated April 8, 1997, which reflects the revised delivery point voltage levels of service to Coosa Valley Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147). The parties request an effective date of September 1, 1997.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER97–4284–000]

Take notice that on August 20, 1997, Southern Company Services, Inc. (SCS), by and on behalf of Alabama Power Company (APCo), tendered for filing a Transmission Service Delivery Point Agreement dated September 1, 1997, which reflects the addition of a delivery point to Clark-Washington Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147). The parties request an effective date of September 1, 1997, for the addition of the delivery point.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Light Company

[Docket No. ER97–4285–000]

Take notice that on August 20, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission two substitute Indices of Customers under its Coordination Sales Tariff and a service agreement for one new customer.

CILCO requested effective dates of August 2 and August 18, 1997 for these documents.

Copies of the filing were served on all affected customers and the Illinois Commerce Commission.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Moon Lake Electric Association, Inc.

[Docket No. ER97–4286–000]

Take notice that on August 20, 1997, Moon Lake Electric Association, Inc. (Moon Lake), submitted an Application for Disclaimer of Jurisdiction or, In the Alternative, Commission Acceptance of certain long-standing agreements under which it provides distribution-type delivery service to end-use customers of four purchasers. Those purchasers of delivery service from Moon Lake are: Deseret Generation & Transmission Cooperative; the Bureau of Reclamation of the United States Department of the Interior; Central Utah Water Conservancy District; and Pacificorp.

Moon Lake is a non-profit distribution cooperative that owns, operates and controls only limited and discrete transmission facilities that do not constitute an integrated grid. Moon Lake has no sales of power at wholesale. On October 16, 1996, Moon Lake retired its outstanding Rural Utilities Service (RUS) debt.

Moon Lake seeks a disclaimer of jurisdiction over its arrangements with these four purchasers because the service that Moon Lake provides is for delivery to end-use customers of the purchasers over lines of Moon Lake that are radial in nature serving a

distribution function. In the event that disclaimer of jurisdiction is not granted, Moon Lake requests acceptance of its delivery agreements, effective on October 16, 1996 when Moon Lake's RUS debt was retired. Moon Lake seeks no changes in the rates, charges, terms and conditions of these agreements. Accordingly, Moon Lake seeks a waiver pursuant to 18 CFR 35.11 of the 60-day prior notice requirement of 18 CFR 35.3.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas City Power & Light Company

[Docket No. ER97–4287–000]

Take notice that on August 20, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated July 28, 1997, between KCPL and NP Energy, Inc. KCPL proposes an effective date of August 7, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER97–4288–000]

Take notice that on August 20, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated August 7, 1997, between KCPL and Commonwealth Edison Company. KCPL proposes an effective date of August 7, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Mexico

[Docket No. ER97–4289–000]

Take notice that on August 20, 1997, Public Service Company of New Mexico (PNM), submitted for filing executed service agreement for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff with the following transmission service customers: Williams Energy Services Company (2 agreements, dated May 28, 1997 for Non-Firm Service and Short Term Firm Service), Coral Power, L.L.C. (dated May 19, 1997 for Non-Firm Service), Citizens Lehman Power Sales (dated February 18, 1997 for Short Term Firm Service), Federal Energy Sales, Inc. (dated July 11, 1997 for Non-Firm Service), Vitol Gas & Electric L.L.C. (2 agreements dated June 25, 1997 for Short Term Firm Service and Non-Firm Service), Kansas City Power & Light Co. (dated July 15, 1997 for Non-Firm Service), Constellation Power Source, Inc. (dated July 21, 1997 for Non-Firm Service), and Western Resource, Inc. (dated July 22, 1997 for Non-Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Duquesne Light Company

[Docket No. ER97–4290–000]

Take notice that on August 21, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated August 13, 1997 with New York State Electric & Gas under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds New York State Electric & Gas as a customer under the Tariff. DLC requests an effective date of August 13, 1997 for the Service Agreement.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Maine Public Service Company

[Docket No. ER97–4291–000]

Take notice that on August 20, 1997, Maine Public Service Company (Maine Public) filed an executed Service Agreement with New Energy Ventures, Inc.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. St. Joseph Light & Power Co.

[Docket No. ER97–4292–000]

Take notice that on August 20, 1997, St. Joseph Light & Power Co. (St. Joseph), tendered for filing a proposed change in its FERC Open Access Transmission Tariff. The change consists of a Revised Index of Point-To-Point Transmission Service Customers under St. Joseph's Open Access Transmission Tariff.

Copies of the filing were served on each person designated on the official service list compiled by the Secretary in FERC Docket No. OA96–3–000.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER97–4294–000]

Take notice that on August 22, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for the following Transmission customers: AYP Energy and NIPSCO Energy Services. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective dates under the Service Agreements are July 21, 1997 and July 28, 1997.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER97–4295–000]

Take notice that on August 21, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing executed Service Agreements between Virginia Electric and Power Company and under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to Florida Power Corporation under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Florida Public Service Commission, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Company

[Docket No. ER97–4296–000]

Take notice that on August 21, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-

to-Point Transmission Service between American Electric Power Service Corporation and Virginia Power under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to American Electric Power Service Corporation Company as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Power, a Division of Duke Energy Corp.

[Docket No. ER97–4297–000]

Take notice that on August 21, 1997, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that Duke had completed all the steps for pool membership. Duke requests that the Commission amend the WSPP Agreement to include it as a member.

Duke requests an effective date of August 22, 1997 for the proposed amendment. Accordingly, Duke requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. St. Joseph Light & Power Company

[Docket No. ER97–4298–000]

Take notice that on August 20, 1997, St. Joseph Light & Power Co. (St. Joseph), tendered for filing four executed Service Agreements under its Open Access Transmission Tariff. The four Form of Service Agreements are with: Constellation Power Source, Inc., Kansas City Power & Light Co., Southern Energy Trading and Marketing, Inc., and Tenaska Power Services Co. The Service Agreements are being filed to implement St. Joseph's Open Access Transmission Tariff.

Copies of the filing were served on Constellation Power Source, Inc., Kansas City Power & Light Co., Southern Energy Trading and Marketing, Inc., and Tenaska Power Services Co.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Central Maine Power Company

[Docket No. ER97–4299–000]

Take notice that on August 22, 1997, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with PECO Energy Company. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: September 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Coalition Against Private Tariffs

[Docket No. EL97–58–000]

Take notice that on August 27, 1997, Coalition Against Private Tariffs (CAPT) filed a Motion for Issuance of a Cease and Desist Order asking that the Commission reassert its exclusive jurisdiction over the terms and conditions of transmission service as they relate to the transaction information requirements of the North American Electric Reliability Council's (NERC) Policy 3, and order NERC, its regional councils and member utilities to cease and desist from imposing those requirements.

NERC Policy 3 establishes requirements for all parties involved in energy interchange transactions and scheduling. As part of these requirements, NERC has developed requirements for transmission customers to file transaction information under an interim Transaction Information System (tagging requirements).[1]

CAPT argues that NERC should file its tagging requirements with the Commission for public review and comment. The Commission wants to develop a better understanding of NERC's tagging procedure and its commercial implications. We invite interested persons to submit written comments addressing the issues raised in CAPT's filing. We also request comments on the relationship between the tagging procedure and electronic scheduling of transactions. Commenters are also requested to advise the Commission concerning whether they believe NERC's tagging requirements are inconsistent with the Order Nos. 888 and 888–A pro forma tariff. Commenters should restrict their comments to these issues only.

[1] NERC Operating Policy 3—Interchange, revised July 8, 1997. NERC recently announced that it will release changes to Policy 3, including making the identification of generator resources and loans optional.

Interested persons should submit written comments (an original and 14 paper copies and one copy on a computer diskette in WordPerfect 6.1 format or in ASCII format) on or before October 10, 1997. Comments must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 and must contain a caption that references Docket No. EL97–58–000. All written comments will be placed in the Commission's public files and will be available for public inspection or copying in the Commission's Public Reference Room during normal business hours. All comments received on diskette will be made available to the public on the Commission's electronic bulletin board (EBB).

Copies of CAPT's filing, which include as an attachment a copy of NERC's Policy 3, are on file with the Commission and are available for public inspection or copying in the Commission's Public Reference Room during normal business hours.

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. 97–24700 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11175–002, Minnesota]

Crown Hydro Company; Notice of Availability of Environmental Assessment

September 11, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory

Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Crown Mill Hydroelectric Project to be located on the Mississippi River in Minneapolis, Hennepin County, Minnesota, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24620 Filed 9–16–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRC–5893–4]

Clean Air Act Advisory Committee; Mobile Source Technical Advisory Subcommittee; Notification of Public Advisory Subcommittee Open Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Mobile Source Technical Advisory Subcommittee of the Clean Air Act Advisory Committee will meet on October 15, 1997 at 9:30 am to 4 pm (Eastern Standard Time) at Dupont Plaza Hotel—Embassy Hall, 1500 New Hampshire Avenue, N.W., Washington, DC 20036, Ph: 202/483–6000. This is an open meeting and seating will be on a first-come basis. During this meeting, the subcommittee will hear progress reports from its workgroups, approve its report to the Clean Air Act Advisory Committee, and be briefed on and discuss other current issues in the mobile source program.

Members of the public requesting further technical information should contact Philip A. Lorang, Designated Federal Officer of the Mobile Sources Technical Review Subcommittee of FACA, at the U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105 at 313/668–4374, fax 313/741–7821, or email lorang.phil@epamail.epa.gov. Members requesting further administrative information should contact Jennifer Criss, Mobile Sources Technical Advisory Subcommittee Management Officer at the U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105 313/668–4518 FACA Helpline, fax 313/741–7821, or email criss.jennifer@epamail.epa.gov. Written comments of any length (with at least 20 copies provided) should be sent to the subcommittee no later than October 6, 1997.

The Mobile Source Technical Advisory Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Margo T. Oge,

Director, Office of Mobile Source.

[FR Doc. 97–24681 Filed 9–16–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34116; FRL 5743–4]

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 March 16, 1998.

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: Rm. 216, Crystal Mall #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 five 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 March 16, 1998 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.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
003125–00419	SUMMIT S Flowable Fungicide	Sulfur; Triadimefon	Sugar beets, wheat, grasses grown for seed, cucurbits
004816–00717	Pyraperm Flea & Tick Spray	Piperonyl butoxide; Pyrethrins	All plant uses
059639–00015	Dibrom 8 Emulsive	Naled	Rangeland use, turf use
059639–00018	Fly Killer D	Naled	Bait & cockroach spot treatment use
059639–00090	TRUMPTET EC Insecticide	Naled	Rangeland use

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
003125	Bayer Corporation, 8400 Hawthorne Road, P.O. Box 4913, Kansas City, MO 64120.
004816	AgrEvo Environment Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
059639	Valent U.S.A. Corporation, 1333 N. California Blvd., P.O. Box 8025, Suite 600, Walnut Creek, CA 94596.

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: September 4, 1997.

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 97–24695 Filed 9–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–762; FRL–5741–1]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–762, must be received on or before October 17, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
William Jacobs, Acting (PM 14),.	Rm. 219, CM #2, 703–305–6406, e-mail: jacobs.william@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Joanne Miller (PM 23), ..	Rm. 237, CM #2, 703–305–6224, e-mail: miller.joanne@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–762] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–762] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 2, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. AgrEvo USA Company

PP 9F3714 and 3F4182

EPA has received two pesticide petitions (PP 9F3714 and 3F4182), requests from AgrEvo USA Company, Wilmington, DE 19808, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.430(b) by changing the time-limited tolerances to permanent tolerances; and by establishing a regulation to permit residues of fenoxaprop-ethyl and its metabolites 2-[4-[(6-chloro-benzolyloxy) phenoxy] propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one in or on the raw agricultural commodities: barley grain at 0.05 part per million (ppm) and barley straw at 0.10 ppm. The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by gas chromatography using halogen-selective electron capture detection. EPA has determined that these petitions contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of these petitions. Additional data may be needed before EPA rules on these petitions.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue of this pesticide is adequately understood. This was demonstrated in metabolism studies in plants (cotton, rice, soybeans and wheat) and livestock (goat and hen) using both chlorophenyl-labeled and dioxyphenyl-labeled test material. Fenoxaprop-ethyl degrades rapidly *via* ester hydrolysis to fenoxaprop free acid, which is the principal observed metabolite. Subsequent cleavage of the phenoxy linkage of this matabolite produces the benzoxazolone metabolite.

2. *Analytical method.* An adequate analytical method is available for enforcement purposes. This method accounts for combined residues of fenoxaprop-ethyl and its metabolites, fenoxaprop free acid and 6-chloro-2,3-dihydrobenzoxazol-2-one. An acid hydrolysis/extraction procedure is used to liberate and/or cleave the residue to the common benzoxazolone moiety. After clean-up and derivatization, the residues are determined by gas chromatography using a halogen-selective electron capture detector. The residues are ultimately expressed as fenoxaprop-ethyl equivalents. The analytical method has passed the independent laboratory validation according to PR Notice 88–5, as well as US EPA laboratory validation, and has been approved for regulatory enforcement purposes. The method is published in the Pesticide Analytical Manual (PAM II).

3. *Magnitude of residues.* Extensive field residue trials have been conducted with fenoxaprop-ethyl on barley and wheat throughout the major cereal-growing regions of the United States. Applications at the maximum use rate resulted in no detectable residues of fenoxaprop-ethyl in or on the raw agricultural commodities barley and wheat (grain, straw). Likewise, there were no detectable residues in the processed commodities (flour and bran) in samples obtained from processing studies on barley and wheat using exaggerated application rates. EPA therefore established temporary tolerances based on the Limits of Quantification (LOQ) of 0.05 ppm for fenoxaprop-ethyl and its metabolites on barley grain, and 0.10 ppm on barley straw, as well as time-limited tolerances of 0.05 ppm on wheat grain, and 0.5 ppm on wheat straw. In addition, time-limited tolerances for the following commodities were established (55 FR 50393, December 6, 1990): cattle fat, meat, mbyp at 0.05 ppm; goat fat, meat, mbyp at 0.05 ppm; hog fat, meat, mbyp at 0.05 ppm; horse fat, meat, mbyp at 0.05 ppm; sheep fat, meat, mbyp at 0.05 ppm; and milk at 0.02 ppm.

B. Toxicological Profile

The toxicology of fenoxaprop-ethyl has been thoroughly evaluated by EPA as part of previous regulatory actions. These studies, that were conducted with the racemate, are considered to be valid, reliable and adequate for the purposes of evaluating potential health risks and for establishing tolerances for both the racemic and isomer-enriched forms of the active ingredient. These studies include the following:

1. *Acute toxicity.* Acute toxicity studies supporting an EPA Toxicity Category III classification (rat oral and dermal LD_{50} values of 2,397 mg/kg/day and >2,000 mg/kg/day, respectively).

2. *Genotoxicity.* A battery of genotoxicity studies, none of which indicated any genotoxic potential. The studies submitted included: *in vitro* human lymphocyte chromosomal aberration, mouse micronucleus, *in vitro* unscheduled DNA synthesis, *Ames Salmonella* bacterial point mutation and yeast DNA repair assays.

3. *Reproductive and developmental toxicity.* Two 2-generation rat reproduction studies with no evidence of reproductive effects in either study. In the first study, the EPA concluded that 30 ppm was the NOEL for parental toxicity but that, because of kidney and liver weight changes, no NOEL was determined for the offspring. In a second study at the same dose levels, the EPA concluded that 5 ppm (0.4 mg/kg/day) was the NOEL for both adults and offspring.

4. *Subchronic toxicity.* A number of developmental toxicity studies in rats, rabbits, mice and monkeys. The maternal and developmental NOEL's in these studies were similar, and ranged from 10 to ≥50 mg/kg/day. In rabbits, the maternal and developmental NOEL's were considered to be 12.5 and 50 mg/kg/day, respectively. In one of the rat studies, the developmental NOEL (10 mg/kg/day) was lower than the maternal NOEL (32 mg/kg/kg). However, in a second rat study conducted using the same dose levels, the maternal and developmental NOEL were both 32 mg/kg/day. In the monkey study, no clear developmental effects were noted even at a dose level (50 mg/kg/day) which was lethal to 45% of the monkeys. Thus, the overall weight of evidence indicates the lack of any specific developmental effect and no increased sensitivity to the embryo or fetus.

5. *Chronic toxicity.* A 2–year mouse oncogenicity study with no indication of carcinogenicity at dose levels up to 40 ppm (6 mg/kg/day), the highest dose tested. However, this high-dose level did not meet the EPA's criteria for a Maximum Tolerated Dose (MTD); thus a new study was conducted. In this study, an increased incidence of various non-neoplastic liver lesions as well as an increased incidence of primarily benign liver tumors were noted at 115 and 320 ppm. Although this study has not yet been reviewed by the EPA Cancer Peer Review Committee, AgrEvo believes that both of these dose levels exceeded the

MTD. No neoplastic or non-neoplastic lesions were noted at 40 ppm (6.2 mg/kg/day), which was considered the NOEL.

6. *Animal metabolism*. Absorption, distribution, metabolism and excretion studies in several species indicate that fenoxaprop-ethyl is well absorbed after oral administration and relatively rapidly metabolized and excreted. No evidence of bioaccumulation was noted after repeated dosing.

7. Metabolite toxicology. All significant metabolites have been identified and tested as part of the overall toxicology requirements for the parent compound, and expressed in the existing and /or pending tolerances.

C. Aggregate Exposure

1. *Dietary exposure*. The dietary exposure is discussed below under the topics food and drinking water.

(a) *Food*. A dietary exposure assessment was performed for fenoxaprop-ethyl using the Exposure 1 software system (TAS, Inc.) and the 1977–78 USDA consumption data. The first assessment calculated the Theoretical Maximum Residue Contribution (TMRC). The TMRC is a ''worst-case'' estimate that assumes that 100% of the listed crops have been treated and that all commodities including meat and milk contain residues at the tolerance level. A more realistic exposure assessment was also conducted using estimates of percent crop treated and anticipated residue levels.

(b) *Drinking water*. The potential for fenoxaprop-ethyl to leach into groundwater was assessed in various laboratory studies as well as in terrestrial field dissipation studies conducted in several locations and soil types. The degradation of fenoxaprop-ethyl and its main metabolites occurs rapidly in both laboratory and the field, with half-lives in soil ranging from 9 to 14 days. No evidence of leaching of parent or degradation products was observed. The compound is immobile and the potential to leach into groundwater is negligible. Fenoxaprop-ethyl adsorbs strongly to soil (Koc = 12,500 to 18,880) and has a low water solubility (0.9 mg/l at pH 7), which results in minimal field runoff and a low potential for contamination of surface water. Together, these data indicate that residues of fenoxaprop-ethyl are not expected in drinking water. Therefore, the contribution of any such residues to the total dietary intake of fenoxaprop-ethyl will be negligible. There is no established Maximum Contaminant Level (MCL) or Health Advisory Level (HAL) for residues of fenoxaprop-ethyl in drinking water.

2. *Non-dietary exposure*. Fenoxaprop-ethyl is registered for selective postemergence grass control in turfgrass including sod farms, commercial and residential turf and ornamentals. All of these applications are done by professional applicators; there are no homeowner uses. Thus, the only non-occupational exposure would be from dermal contact during reentry to treated areas. Insufficient information is currently available to conduct a reliable assessment of potential exposure from reentry on turf. Studies to quantitate this exposure are now being conducted by the Outdoor Residential Exposure Task Force (ORETF). However, AgrEvo believes that such exposures are relatively low and, based on the available toxicology data, are unlikely to pose a significant risk to human health.

D. Cumulative Effects

Fenoxaprop-ethyl is a member of the aryloxy phenoxy-propionate class of herbicides. It is an inhibitor of fatty acid biosynthesis in both plants and animals, and induces peroxisome proliferation in rodents. Like other peroxisome proliferators, it induces liver tumors in mice at exaggerated dose levels. However, the precise mechanism by which peroxisome proliferators induce liver tumors in rodents has not yet been determined. In addition, humans are considered to be far less sensitive to the peroxisome proliferative effects of these compounds than are rodents. Furthermore, the methodology to evaluate the potential aggregate risks from multiple chemicals with a common mechanism of action has not yet been defined. Therefore, only exposure from fenoxaprop-ethyl is being addressed at this time.

E. Safety Determination

1. *U.S. population*. The toxicity and residue data bases for fenoxaprop-ethyl are considered to be valid, reliable and essentially complete. The EPA Carcinogenicity Peer Review Committee has not yet reviewed the results of the recently completed mouse oncogenicity study in which liver tumors were noted. However, AgrEvo believes that quantitative oncogenic risk assessment is inappropriate for the following reasons:

(a) Evidence of oncogenicity was limited to a single site (liver) in a single species (mouse), and occurred only at dose levels that were considered by AgrEvo to have exceeded the MTD.

(b) No evidence of genotoxicity has been observed.

(c) Fenoxaprop-ethyl is known to be a peroxisome proliferator and the tumors were noted only in conjunction with significant non-neoplastic hepatotoxicity.

(d) The relevance of mouse liver tumors, particularly those caused by hypolipidemic peroxisomal proliferators, to human risk assessment is considered minimal, especially at the extremely low dose levels to which humans would typically be exposed.

Thus, a standard margin of safety (exposure) approach is considered appropriate to assess the potential for fenoxaprop-ethyl to produce both oncogenic and non-oncogenic effects. The EPA has previously adopted an RfD value of 0.0025 mg/kg/day for fenoxaprop-ethyl. This value was based on the Agency's conclusion of a 5 ppm NOEL for both parents and offspring in the second multigeneration rat reproduction study and a 100–fold safety (uncertainty) factor. However, in converting the NOEL dietary concentration of 5 ppm to test material intake (mg/kg/day), the EPA used a standard conversion factor for food consumption in adult rats rather than study specific results. Based on actual food consumption values, the NOEL for this study was really equivalent to an average dose level of approximately 0.4 mg/kg/day for the adults and approximately 1 mg/kg/day for the offspring. Furthermore, AgrEvo believes that the results of the original rat reproduction study and the 2-year rat chronic toxicity study support the conclusion that the NOEL for adult toxicity in the second rat reproduction study was not 5 ppm but 30 ppm (2.5 mg/kg/day). Therefore, AgrEvo believes that the RfD should have been based on the NOEL of approximately 0.9 mg/kg/day from the 2–year dog study or, since rats are the most sensitive species to fenoxaprop-ethyl, the NOEL of approximately 1 mg/kg/day for offspring in the second reproduction study. This would result in an RfD of 0.01 mg/kg/day, not 0.0025 mg/kg/day. Nevertheless, for this risk assessment, AgrEvo used the RfD value of 0.0025 mg/kg/day assigned by EPA.

The aggregate exposure of the general population to fenoxaprop-ethyl from the established and pending tolerances utilizes about 17% of the RfD using worst-case assumptions (100% crop treated and tolerance level residues for all commodities, including livestock). Assuming more realistic estimates of percent crop treated and anticipated residues, only 2% of the RfD was utilized. The RfD represents the level at or below which daily aggregate exposure over a lifetime would not pose

a significant risk to human health. There is generally no concern for exposures which utilize less than 100% of the RfD, particularly when conservative assumptions are utilized for the calculations. Therefore, there is a reasonable certainty that no harm will result to the general population from aggregate risk to residues of fenoxaprop-ethyl.

2. *Infants and children.* Data from rat and rabbit developmental toxicity studies and rat multigeneration reproduction studies are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from potential exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from potential prenatal and postnatal exposure to the pesticide.

The overall weight of the evidence from the developmental toxicity studies and multigeneration rat reproduction studies indicates that the toxicity of fenoxaprop-ethyl to infants and children is comparable to its toxicity to adults. No reproductive effects were noted in either of the two multigeneration studies. Developmental effects were noted in rats and rabbits, but generally only at dose levels that induced maternal toxicity. No clear developmental effects were noted in monkeys even at dose levels that were lethal to 45% of the mothers. In general, the maternal and developmental NOEL's in the various studies were comparable and ranged from 10 to 50 mg/kg/day.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children to account for pre- and post-natal toxicity and the completeness of the data base. However, the toxicology data base for fenoxaprop-ethyl is complete according to existing Agency data requirements and does not indicate any developmental or reproductive concerns. Furthermore, the existing RfD of 0.0025 mg/kg/day already provides an approximately 400–fold safety factor relative to the NOEL (1 mg/kg/day) for offspring in the multigeneration rat reproduction study and a 4,000–fold safety factor relative to the lowest developmental NOEL (10 mg/kg/day) observed in the developmental toxicity studies. Thus, the existing RfD is considered appropriate for assessing potential risks to infants and children and an additional uncertainty factor is not warranted.

Using worst-case assumptions (100% crop treated and tolerance level residues for all commodities, including livestock), aggregate exposure to residues of fenoxaprop-ethyl is expected to utilize about 65% of the RfD in non-nursing infants (less than 1–year old), 42% of the RfD in children aged 1 to 6–years old, 28% of the RfD in children aged 7 to 12–years old, and 16% of the RfD in nursing infants. Using more realistic estimates of percent crop treated and anticipated residues, the percent of RfD utilized would be no more than 8% (non-nursing infants less than 1–year old) for these population subgroups. Therefore, there is a reasonable certainty that no harm will result to infants or children from aggregate exposure to fenoxaprop-ethyl residues.

F. International Tolerances

As no residues were detected (LOQ < 0.05 ppm) in wheat and barley grain, there are no Codex, Canadian or Mexican Maximum Residue Limits (MRLs) for residues of fenoxaprop-ethyl in these commodities. Therefore, international harmonization is not an issue for these tolerances. (PM 23)

2. BOC GASES

PP 7F4809

EPA has received a pesticide petition (PP 7F4809) from BOC GASES c/o the Sloane Group, 52 Amogerone Crossway, Greenwich, CT, 06830. The Petition proposes, pursuant to section 408 of the Federal Food, Drug, and, Cosmetic Act (FFDCA), 21 U.S.C 346a to establish a temporary tolerance for the use of ECO_2FUME in accordance to 40 CFR 180.225, 180.375, 185.200, 185.3800. As required by section 408(d) of FFDCA, as recently amended by the Food Quality Protection Act (FQPA), BOC Gases included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the view of BOC GASES, the EPA is in the process of evaluating the petition. As required by section 408(d)(3), EPA is including the summary as a part of this notice of filing. EPA may have minor edits to the summary for purposes of clarity.

This petition is submitted by BOC GASES, under section 408 of the Federal Food Drug and Cosmetic Act (21 U.S.C. 346a), as most recently amended by the FQPA. This submission proposes a temporary tolerance for purposes of an experimental use permit for the fumigant ECO_2FUME. This petition is associated with a request for an experimental use permit for a non-crop destruct program for $ECO_2FUMETM$. This pesticide contains 2% Phosphine (PH_3) and 98% Carbon Dioxide (CO_2) by weight as a cylinderized gaseous mixture.

This Petition requests that the temporary tolerance mirror 40 CFR part 180 and 185 and thereby establishing a temporary tolerance for the following raw agricultural commodities from the post harvest treatment with $ECO_2FUMETM$: Almonds, Avocados, Bananas, Barley, Beans, (cocoa), Beans, (coffee), Brazil nuts, Cabbage, (Chinese), Cashews, Citrus citron, Cocoa beans, Coffee beans, Corn, Corn pop, Cottonseed, Dates, Eggplants, Endive (escarole), Filberts, Grapefruit, Kumquats, Lemons, Lettuce, Limes, Mangos, Millet, Mushrooms, Nuts, (Brazil), Nuts, (Pistachios), Oats, Oranges, Papayas, Peanuts, Pecans, Peppers, Persimmons, Pimentos, Pistachio nuts, Plantains, Rice, Rye, Safflower seed, Salsify tops, Sesame seed, Sorghum, Soybeans, Sunflower seed, Sweet potatoes, Tangelos, Tangerines, Tomatoes, Vegetables, seed and pod (except soybeans), Walnuts, and Wheat Data pertaining to the product chemistry, use patterns, safety, residues, removing residues, detecting residues, endocrine effects and exposure to infants and children, have been submitted.

This petition is based on the following facts:

1. CO_2 is exempt from tolerances (40 CFR 180.1049), and hence no tolerance is required for this active ingredient $ECO_2FUMETM$ contains a very low percentage of phosphine.

2. A tolerance has already been established for phosphine generated from aluminum phosphide and magnesium phosphide.

3. Quantities of phosphine utilized with the $ECO_2FUMETM$ process are significantly lower than the quantities generated in the use of the metal phosphides.

4. Literature data show phosphine residues levels from the use of $ECO_2FUMETM$ are less than 0,001 ppm.

5. Unlike metal phosphides, the application method is controlled and precise with predictable residue results. The petitioners agree that this summary or any information it contains may be published as a part of the notice of filing of the petition and as part of a proposed or final regulation issued under Sec. 408 of the FFDCA.

A. Product Chemistry Data

1. *Analytical methodology.* $ECO_2FUMETM$ mixture: Phosphine 2% and CO_2 98%. Analysis of gases and gas mixtures are conveniently and accurately carried out using gas chromatography. The GC/MS technique

developed by AGAL, Pymble for analyzing trace contaminants, particularly other derivatives of phosphine in the ECO_2FUMETM mixture is detailed in the submission.

2. *Chemical and physical properties of end use product.* All BOC produced and purchased gases are the subject to a Quality Control program. In addition to works instructions and works tests representative, samples of individual batch are verified for purity by analytical chemists in BOC's laboratories.

2.1 *Color* - colorless gas

2.2 *Odor* - Odor of rotting fish above 2 ppm phosphine (''carbide'' odor)

2.3 *Bulk Density* - Not applicable

2.4 *Density* - Specific Gravity is 1.5. (Air=1) i.e. heavier than air

2.5 *Viscosity* - 1.4 x 10^{-4} poise

2.6 *Flammability hazard*

ECO_2FUMETM consists of mixture of 2.6% by volume (2% by weight) of phosphine in carbon dioxide and is non-flammable.

3. *Specifications formulation.* ECO_2FUMETM [20g/kg PH_3 in CO_2] Chemically Pure Grade Phosphine of typical purity (990g/kg) sufficient to give...20g/kg Carbon Dioxide - balance to give...980g/kg - Phosphine: [PH_3]; CAS registry no. 7803-51-2, molecular weight 34.00 - Carbon Dioxide: [CO_2]; CAS registry no. 124-38-9, molecular weight 44.01

Use Pattern

1. *Fields of use.* ECO_2FUMETM is used for the control of eggs, larvae, pupae, and/or adults of the following stored product pests: Angoumois grain moth, bean weevil, cadelle, cereal leaf beetle, cigarette beetle, coffee bean weevil, confused flour beetle, cowpea beetle, dried fruit beetles, flat grain beetles, fruit flies, granary weevil, Indian meal moth, Khapra beetle, larger wax moth, lesser grain borer, lesser wax moth, maize weevil, Mediterrarean flour moth, merchant grain beetle, mottled grain moth, pink bollworm, psocids, raisin moth, rediegged ham beetle, rice weevil, rust-red flour beetle, sawtoothed grain beetle, skin and hide beetles, spider beetles, stored product mites, tobacco moth, tropical warehouse moth, warehousez beetle, yellow mealworm.

Treatment for the above pests at the specified rates will kill any cockroaches, rats and mice present.

2. *Use level of product—i. Dosage.* Seventy-five g/m3 of ECO_2FUMETM (equivalent to 1.5 g/m3 of phosphine) in well-sealed storages.

ii. *Minimum exposure.* Temperatures above 25°C.. 7 days, temperatures above 150-25°C..10 days. ECO_2FUMETM should be used in storages in which the standard of gastightness is consistent with a decay of an excess external pressure from 500 Pa (2'' w.g.) to 250 Pa (1'' w.g.) in not less than 5 minutes in filled storages.

3. *Situations—i. Foods.* Raw cereal grains (such as barley, maize, millets, oats, rice, rye, sorghum, wheat) and other food commodities such as animal feeds, breakfast cereals, brewing malt, chocolate products, cocoa beans, coffee beans, dried fruits, dried vegetables, flour, milled cereal products, nuts, oilseeds, other dried foods, seeds, soybeans, tapioca, eta.

ii. Tobacco and tobacco products.

iii. Timber and cane products; Building and structures.

4. *Limitations*—i. *Directions for use.*—Mixing. The ECO_2FUMETM gas mixture is ready for use as per label directions.

ii. *General instructions.* Only experienced and properly instructed persons should use ECO_2FUMETM. While in the container ECO_2FUMETM is a liquid mixture under pressure, which turns to gas when, released. The gas must be confined along with commodities being fumigated under a gas-proof cover or in a container of structure that is airtight.

iii. *Restraints.*

DO only apply ECO_2FUMETM in well-sealed storages.

DO only apply ECO_2FUMETM with the high-pressure kit (CIG Kit 416600)

DO use extreme caution when handling ECO_2FUMETM.

DO perform fumigation and aeration in accordance with label.

DO show prominently warning signs: ''DANGER---POISON GAS---KEEP AWAY''

DO NOT enter fumigation area and keep animals, children, and unauthorized persons away until the area is shown to be free from phosphine as indicated by a gas-measuring device.

5. *Withholding periods.* A period of three days after completion of ventilation before using treated commodities for human consumption or for stock food. Treated commodities may be safely transported after completion of the recommended ventilation period.

6. *Protection of livestock, wildlife and others.* As a general precautionary measure, the following advice will appear on the label. Store in a cool well ventilated, locked area out of reach of children or unqualified persons and away from habitation. Cylinder always remains the property of BOC, and should be returned for refilling.

C. Toxicology of End Use Product and Technical Active Ingredient

Toxicology summary. Toxicological evaluation of fumigation usage of phosphine has been based upon phosphine gas. ECO_2FUME, the non-flammable gaseous phosphine mixture, is dispensed via gas-tight distribution systems. The proposed use of non-flammable ECO_2FUME offers improved operator safety, accurate controllable dosage and the elimination of fire hazard. Toxicity study results show phosphine to be a highly toxic inhalation poison. Oral toxicity while not relevant for gaseous phosphine (although a concern with metallic phosphides) has been cleared in long-term feeding studies. Dermal toxicity is not an anticipated concern, as phosphine gas is not absorbed through the skin. Eye irritation may be a concern in acute exposure, but all operators will be required to wear protective eyewear. Acute animal studies show that albino rats can tolerate 5 ppm over several months but 10 ppm with continual exposure causes mortality. Single dose studies indicate 40 ppm for 6 hours have 100% mortality. Long-term animal studies show rats have no toxic effects when fed on a diet of metallic phosphide or on phosphine-fumigated diets. As no specific antidote is known, symptomatic treatment is required. Chronic exposure affects the visual, motor and gastro-intestinal tract. Long-term exposure to low concentration can cause anemia and bronchitis. Organs with the greatest oxygen requirement appear to be especially sensitive to damage. The NOEL for ECO_2FUME is 2mg/kgbw/day and ADI is 0.02mg/kgbw/day.

The 1986 ACGIH has recommended a Threshold Limit Value (TLV-TWA) of 0.3 ppm (0.4 mg/m3) with a STEL of 1 ppm for phosphine. Using a tidal volume of 0.5 litters, 12 breaths/min, a body weight of 80kg and the TLV-TWA of 0.4mg/m3 gives a NOEL of 0.04mg/kgbw/day for phosphine.

D. Residue Testing

1. *Summary.* Analytical techniques for the determination of phosphine residues in a range of stored food studies with a limit of detection better than 0.0001mg/kg are available. Analytical methods have been used to obtain data on the amount of phosphine which remains in these commodities after treatment with ECO_2FUMETM at typical and exaggerated dosage levels and on its persistence during storage. Results show that residues fall quickly to below internationally recommended levels. Maximum residue limits for

cereal grains are 0.1 mg/kg and is 0.01mg/kg for processed foods after treatment with PH_3 generated from metal phosphides. This corresponds to the levels set both by Environmental Protection Agency/the NH & MRC of Australia and the Codex Alimentarius Commission of the WHO/FAO.

2. *Analytical methodology.* The maximum residue limit recommended by the Codex Alimentarius Commission of the WHO/FAO for phosphine in raw cereals is 0.1mg/kg and in milled cereals and a range of foodstuffs including nuts it is 0.01mg/kg. An improved method for the determination of phosphine residues in a range of stored foodstuffs with a limit of detection better than 0.0001mg/kg is described by K.A. Scudamore and G.Goodship (Ref: ''Determination of Phosphine Residues in Fumigated Cereals and other Foodstuffs.'' Pestic. Sci. 1986, 37; 385-395). The method has been used to obtain data on the amount of phosphine, which remains in these commodities after treatment at typical dosage levels and on its persistence during storage. Results show that in cereal grains and nuts residues fall quickly to below. Internationally recommended levels although ultra trace amounts (less than 0.001 mg/kg) of phosphine could be detected several months after treatment in all the commodities examined.

3. *Crop residue data.* While phosphine is not applied to growing plants or crops it is a well-established fumigant of cereal grain and stored products.

4. *Fate of residues.* The possible reactions of absorbed phosphine within the commodity matrics to form inorganic phosphorous compounds have been detailed. In warm-blooded animals, phosphorous acid and phosphoric acid are formed or else phosphate. The volatile nature of phosphine (boiling point minus 87°C) and its limited solubility ensures that any phosphine absorbed in a foodstuff during treatment would be negligible and rapidly lost. Residue of phosphine held for any length of time is less than 0.001 mg/kg i.e., 0.001 ppm. Phosphoric acid has many uses including an acidulate and flavor in beverages of the soft drink type.

5. *Maximum residue limits— i. Overseas.* The maximum residue limit recommended by the Codex Alimentarius Commission of the WHO/FAO for phosphine in raw cereals is 0.1 mg/kg and in milled cereals and a range of foodstuffs including nuts is 0.01 mg/kg. (Ref: ''Codex Maximum Limits for Pesticide Residues'' Codex Alimentarius Commission Volume XIII, Rome 1983).

ii. *Australia.* The 100th session of the National Health and Medical Research Council, November 1985 gave the maximum residue limit in cereal grains of 0.1 mg/kg; and in flour and other milled cereal products, breakfast cereals, dried fruit, dried vegetables, all other dried foods, spices, nuts, peanuts, cocoa, beans and honey a limit of 0.01 mg/kg. The maximum residue limit is set at or about the limit of analytical determination. If the substance were to occur at or below this limit it is considered that no hazard to human health would occur. (Ref: ''Standard for Maximum Residue Limits of Pesticides, Agricultural Chemical, Feed Activities, Veterinary Medicines and Noxious Substances in Food'' Commonwealth Dept. of Health, Commonwealth of Australia 1986. ISBN 0644 04688 0).

iii. *U.S.A.* Tolerances have been established for commodities fumigated by the fumigant PH_3 generated from metal phosphides. Maximum residue limits for cereal grains are 0.1 mg/kg and is 0.01mg/kg for processed foods after treatment with PH3 generated from metal phosphides.

E. Residue Detection and Removal

See Section D Above

F. Endocrine Effects

Phosphine degrades to phosphates and phosphoric acid or else phosphates, in warm-blooded animals (Ref: ''The Agrochemicals Handbook'', Royal Society of Chemistry, 1986). It has been shown that there is no overt toxicity associates with the residue low levels (order 0.001 ppm) of phosphine products, in fact, a major buffering system of the body utilizes polybasic phosphates; and phosphoric acid is used as an acidulate and flavor in beverages of soft drink type (Ref: The Merck Index, 9th Edition, 7153).

G. Exposure to Infants and Children

Summary. Commodities fumigated with PH_3 at the recommended dosage levels leaves very little residue in the order of 0,001ppm (see part D) Long term feeding studies showed that ingestion of PH_3 fumigated dirt by the rat for 2 years does not cause any marked modification of growth, food intake, nitrogen balance, body composition, functional behavior or the incidence of type of tumors. The product should however, at all times be kept out of reach of children or other uncertified applicators due to acute inhalation toxicity.

H. Reasonable Grounds

ECO_2FUMETM is a mixture of two well known fumigants PH_3 and CO_2. Tolerances have already been established for PH_3 generated from Aluminum and Magnesium phosphide. Maximum residue limits for cereal grains are 0.1 mg/kg and is 0.01mg/kg for processed foods after treatment with PH_3 generated from metal phosphides. CO_2 is exempt from tolerance. Use of ECO_2FUMETM results in approximately 75% less PH_3 being used for fumigation as compared to PH_3 from metal phosphides ECO_2FUMETM has recorded residue levels of below 0,001ppm. (PM 14)

[FR Doc. 97–24694 Filed 9–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–753; FRL–5735–5]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–753, must be received on or before October 17, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public

inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Joanne Miller (PM 23) ...	Rm. 237, CM #2, 703–305–6224, e-mail:miller.joanne@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 229, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–753] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–753] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 5,1997

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. DowElanco

PP 7F4851

EPA has received a pesticide petition (PP 7F4851) from DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268–1054, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of flumethsulam in or on the raw agricultural commodity dry beans at 0.05 ppm. The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography using UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism in plants is adequately understood. No metabolites of significance were detected in plant metabolism studies.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of flumetsulam in or on food with a limit of quantitation (LOQ) of 0.010 ppm, and a limit of detection of 0.005 ppm that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on this method to FDA. The method is availabe to anyone who is interested in pesticide residue enforcement.

3. *Magnitude of residues*. No detectable residues of flumetsulam were found in any of the drybean samples obtained from multiple sites and multiple varieties and analyzed using a method with a limit of detection of 0.005 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Flumetsulam has low acute toxicity. The rat oral LD_{50} is >5,000 mg/kg or greater for males and females. The rabbit dermal LD_{50} is >2,000 mg/kg and the rat inhalation LC_{50} is >1.2mg/L air (the highest attainable concentration). In addition, flumetsulam is not a skin sensitizer in guinea pigs, is not a dermal irritant and is not an ocular irritant. Therefore based on the available acute toxicity data, flumetsulam does not pose any acute dietary risks.

2. *Genotoxicty*. Flumetsulam is not genotoxic. The following studies have been conducted and all were negative for genotoxic responses: a dominant lethal assay, an *In vivo* rat cytogenic study, an *In vitro Salmonella* and *Saccharomyces assay*, an *in vivo* mouse host–mediated assay, and an unscheduled DNA synthesis assay in rats.

3. *Reproductive and developmental toxicity*. In a 2–generation reproduction study in rats, there was no compound–related reproductive toxicity. The No-Observed-Effect Level (NOEL) was greater than 1,000 mg/kg/day. Developmental toxicity was studied using rats and rabbits. The developmental study in rats resulted in a developmental NOEL greater than 1.000 mg/kg/day (highest dose tested) and a maternal NOEL of 500 mg/kg/day. A study in rabbits resulted in a

developmental NOEL equal to or greater than 700 mg/kg/day (highest dose tested) with a maternal NOEL of 100 mg/kg/day and a maternal LOEL (lowest observed effect level) of 500 mg/kg/day evidenced by decreased body weight gain. Based on all of the data for flumetsulam, there is no evidence of developmental toxicity at dose levels that do not result in maternal toxicity.

4. *Subchronic toxicity* . In a 13–week oral feeding study in mice at 5,000 mg/kg/day, slight effects on the liver, kidney, and cecum appeared to represent adaptive responses to treatment and have questionable toxicological significance. The NOEL was 1,000 mg/kg/day (limit dose). In a 13–week oral feeding study in dogs, the lowest–observed–effect level (LOEL) for both male and female dogs was 500 mg/kg/day. A NOEL was not established for males or females. In a 13–week dietary study in rats, the NOEL was 250 mg/kg/day and the LOEL was 1,000 mg/kg/day.

5. *Chronic toxicity*. In a 1–year dietary study in dogs, the NOEL was 100 mg/kg/day and the LOEL was 500 mg/kg/day. The animals were administered feed containing 0, 20, 100, and 500 mg/kg/day. Reduced body weights and inflammatory and atrophic changes in the kidneys occurred in the 500 mg/kg/day dose groups. In a combined feeding carcinogenicity/chronic study in mice there were no treatment–related effects and there was no evidence of a carcinogenic response. Systemic NOEL was greater than or equal to 1,000 mg/kg/day (limit dose); a LOEL was not established. In a combined feeding carcinogenicity/chronic study in rats, renal pathological alterations were seen in males. No treatment-related effects were seen in females at the highest dose (1,000 mg/kg/day) which is the limit dose. There was no carcinogenic response. The NOELs were 500 mg/kg/day in males and 1,000mg/kg/day in females. The LOEL was 1,000 mg/kg/day in males; a LOEL was not established in females. Based on the chronic toxicity data, EPA has established the RfD for flumetsulam at 1.0 milligram (mg)/kilogram (kg)/day. The RfD for flumetsulam is based on the 1–year chronic study in dogs with a NOEL of 100 mg/kg/day and an uncertainty (or safety) factor of 100. Thus, it would not be necessary to require the application of an additional uncertainty factor above the 100–fold factor already applied to the NOEL.

6. *Animal metabolism*. Disposition and metabolism of flumetsulam were tested in male and female rats and male mice at an oral dose of 5 and 1,000 mg/kg for rats and 1,000 mg/kg for mice Flumetsulam was rapidly excreted. The majority of a radioactive dose was excreted in 48 hours of all dose groups. The principle route for elimination was the urine and to a lessor extent by fecal elimination. Detectable levels of residual radioactivity were observed in the carcass and stomach at 72 hours post–dose. HPLC and TLC analysis of urine and fecal extracts showed no apparent metabolism of flumetsulam.

7. *Metabolite toxicology*. There are no flumetsulam metabolites of toxicological significance.

8. *Endocrine effects*. There is no evidence to suggest that flumetsulam has an effectt on any endocrine system.

C. Aggregate Exposure

1. *Food*. For purposes of assessing the potential dietary exposure under these tolerances, exposure is estimated based on the Theoretical Maximum Residue Contribution (TMRC) from the existing and pending tolerances for flumetsulam on food crops. The TMRC is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of those food products eaten by various population subgroups. Exposure of humans to residues could also result if such residues are transferred to meat, milk, poultry or eggs. The following assumptions were used in conducting this exposure assessment: 100% of the crops were treated, the RAC residues would be at the level of the tolerance, certain processed food residues would be at anticipated (average) levels based on processing studies and all current and pending tolerances were included. This results in an overestimate of human exposure and a conservative assessment of risk. Based on a NOEL of 100 mg/kg/day in a 1–year chronic feeding study in the dog and a hundredfold safety factor the reference dose (RfK) would be 1.0 mg/kg/day. The TMRC for the general population would be 4.1 X 10^{-5} mg/kg/day or 0.0041% of the RfD. For non–nursing infants, the TMRC wold be 1.37 X 10^{-5} mg/kg/day or 0.014% of the RfD.

2. *Drinking water*. Another potential source of dietary exposure to residues of pesticides are residues in drinking water. There is no established Maximum Concentration Level for residues of flumetsulam in drinking water. Although there has been limited detections at ppb levels in some of the specially designed studies under highly vulnerable test conditions and at elevated non–labeled application rates, no ongoing monitoring studies, have reported residues of flumetsulam in ground or surface waters.

Based on the physical and chemical characteristics of flumetsulam, such as water solubility and its stability under hydrolysis and photolysis, it has potential for downward movement through the soil profile. Degradation based on over 20 laboratory studies indicated a half–life range of 2 weeks to 4 months with 80% less than 2 months. Degradation is driven primarily by microbial processes. However based on the low application rate and detection in groundwater samples only under extremely vulnerable soil conditions at elevated non–labeled application rates with detections in single digit ppb levels, flumetsulam is not anticipated to be a groundwater contaminant.

In summary, these data on potential water exposure indicate insignificant additional dietary intake of flumetsulam and any exposure is more than compensated for in the conservative dietary risk evaluation. Therefore, it is concluded that there is a reasonable certainty of no harm even at potential upper limit exposures to flumetsulam from drinking water.

3. *Non–dietary exposure*. There are no non–dietary uses for flumetsulam registered under the Federal Insecticide, Fungicide and Rodenticide Act. Potential exposures for children is therefore limited to dietary exposure.

D. Cumulative Effects

The potential for cumulative effects of flumetsulam and other substances that have a common mechanism of toxicity was considered. The mammalian toxicity of flumetsulam is well defined. However, no reliable information exists to indicate that toxic effects produced by flumetsulam would be cumulative with those of any other chemical compound. Additionally, flumetsulam does not appear to produce a toxic metabolite produced by other substances. Therefore, consideration of a common mechanism of toxicity with other compounds is not appropriate at this time. Thus only the potential exposures to flumetsulam were considered in the aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. Based on a NOEL of 100 mg/kg/bwt/day from a one-year dog feeding study with a reduced weight and inflammatory and atrophic kidney effect, and using an uncertainty factor of 100 to account for the interspecies extrapolation and intraspecies variability, a Reference Dose (RfD) of 1.0 mg/kg bwt/day was used for this assessment of chronic risk. As indicated, there is no endpoint of concern identified with acute and short–or intermediate–term exposures. The existing and proposed tolerances

would utilize 0.000041 mg/kg bwt/day or less than 0.01% of the RfD for the U.S. population. And, as indicated previously, whatever upper limit might be used for drinking water exposure, the exposure estimate for flumetsulam would not exceed the RfD. Generally, exposures below 100 percent of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to flumetsulam residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of flumetsulam, data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat were considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism during prenatal development resulting from pesticide exposure to one or both parents. Reproduction studies provide (1) information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and (2) data on systemic toxicity.

As indicated previously, reproductive and developmental toxicity was studied using rats and rabbits. The data base is complete and based on all of the data for flumetsulam, there is no evidence of reproductive or developmental toxicity at dose levels that do not result in maternal toxicity.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post–natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post–natal effects for children is complete. These data suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or post–natal sensitivity. Therefore, an additional uncertainty factor is not necessary to protect the safety of infants and children and that the RfD at 1.0 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

The percent of the RfD that will be utilized by the aggregate exposure from all tolerances to flumetsulamill be less than 0.1% for non–nursing infants and for children (1–6 years of age). Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to flumetsulam residues.

F. International Tolerances

There are no Codex maximum residue levels established for flumetsulam. (Joanne Miller)

2. Rohm and Haas Company

PP 2F4127

EPA has received a pesticide petition (PP 2F4127) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a permanent tolerance for residues of [alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile (fenbuconazole)] in or on the raw agricultural commodities wheat grain; wheat straw; milk; eggs; and meat, fat, and meat by-products of cattle, goats, horses, hogs, poultry, and sheep. The analytical method involves soxhlet extraction, partitioning, redissolving, cleanup, and analysis by gas-liquid chromatography using nitrogen specific thermionic detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

The tolerance expression for fenbuconazole residues in or on wheat grain or straw is: α-(2-(4-chlorophenyl)-ethyl)-α-phenyl-(1*H*-1,2,4-triazole-1-propanenitrile, plus cis-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4- triazole-1-ylmethyl-)-2(3*H*)-furanone, plus trans-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-)-2(3*H*)-furanone

Residues of these are combined and expressed as parent compound to determine the total RAC residue in or on wheat grain and wheat straw.

The tolerance expression for fenbuconazole residues in or on animal fat is: α-(2-(4-chlorophenyl)-ethyl)-α-phenyl-(1*H*-1,2,4-triazole-1-propanenitrile, plus 4-chloro-α-(hydroxymethyl)-α- phenyl-benzenebutanenitrile

Residues are combined and expressed as parent compound to determine the total residue.

The tolerance expression for fenbuconazole residues in or on animal liver is: α-(2-(4-chlorophenyl)-ethyl)-α-phenyl-(1*H*-1,2,4-triazole-1-propanenitrile, plus cis-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-)-2(3*H*)-furanone, plus trans-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-)-2(3*H*)-furanone, plus 4-chloro-α-(hydroxymethyl)-α-phenyl-benzenebutanenitrile

Residues are combined and expressed as parent compound to determine the total residue.

Analytical methods to measure the components of the residue in or on wheat grain and wheat straw, and in or on animal commodities have been validated and accurately quantify residues of fenbuconazole. The residues of fenbuconazole will not exceed the proposed Permanent Tolerances on wheat or related commodities following foliar or seed treatment of wheat.

1. *Analytical method*. Fenbuconazole residues (parent plus lactones) are measured at an analytical sensitivity of 0.01 mg/kg in wheat grain and straw by soxhlet extraction of samples in methanol, partitioning into methylene chloride, redissolving in toluene, clean up on silica gel, and gas-liquid chromatography (GLC) using nitrogen specific thermionic detection. Fenbuconazole residues are measured at an analytical sensitivity of 0.01 mg/kg in fat and liver in essentially the same manner except that one of the analytes in these matrices, 4-chloro-α-(hydroxymethyl)-α-phenyl–benzenebutanenitrile, is measured at a sensitivity of 0.05 ppm.

2. *Magnitude of residues*. Residue studies have been conducted in accordance with the geographic distribution mandated by the EPA for wheat. In the wheat grain, the raw agricultural commodity, the fenbuconazole residues ranged from no detectable residue (NDR < LOQ=0.01 mg/kg) to approximately 0.01 ppm. In wheat straw the fenbuconazole residues ranged from approximately 0.05 ppm to approximately 4.5 ppm. Residues were measured in processed fractions of wheat including cleaned grain, bread, patent flour, flour, red dog, bran, shorts/germ, and middlings. The EPA concluded that no concentration above the residue levels in the RAC occurred so no tolerances for any of these commodities were required. Tolerances of 0.05 ppm in wheat grain and 10 ppm in wheat straw are proposed based on these data.

B. Toxicological Profile

The toxicology of fenbuconazole is summarized in the following sections. There is no evidence to suggest that human infants and children will be more sensitive than adults, that fenbuconazole will modulate human endocrine systems at anticipated dietary exposures, or cause cancer in humans at the dietary exposures anticipated for this fungicide. While the biochemical target for the fungicidal activity of members of the DMI class is shared, it cannot be concluded that the mode of action of fenbuconazole which produces phytotoxic effects in plants or toxic effects in animals is also common to a single class of chemicals.

1. *Acute toxicity*. Fenbuconazole is practically nontoxic after administration by the oral, dermal and respiratory routes. The acute oral LD_{50} in mice and rats is >2,000 mg/kg. The acute dermal LD_{50} in rats is >5,000 mg/kg. Fenbuconazole was not significantly toxic to rats after a 4–hour inhalation exposure, with an LD_{50} value of >2.1 mg/L. Fenbuconazole is classified as not irritating to skin (Draize score = 0), inconsequentially irritating to the eyes (mean irritation score = 0), and it is not a sensitizer. No evidence exists regarding differential sensitivity of children and adults to acute exposure.

2. *Genotoxicity*. Fenbuconazole has been adequately tested in a variety of *in vitro* and *in vivo* mutagenicity tests. It is negative in the Ames test and negative in an *in vitro* and *in vivo* somatic and germ cell tests; it did not induce unscheduled DNA synthesis (UDS). Fenbuconazole is not genotoxic.

3. *Reproductive and developmental toxicity*. These data cited at 60–FR–27419, May 24,1995. Fenbuconazole is not teratogenic. The maternal no observable effect level (NOEL) in rabbits was 10 mg/kg/day and 30 mg/kg/day in rats. The fetal NOEL was 30 mg/kg/day in both species. The parental no observable effect level (NOEL) was 4.0 mg/kg/day (80 ppm) in a 2–generation reproduction study in rats. The reproductive NOEL in this study was greater than 40.0 mg/kg/day (800 ppm; highest dose tested). Fenbuconazole had no effect on male reproductive organs or reproductive performance at any dose. The adult lowest observed effect level (LOEL) was 40.0 mg/kg/day (800 ppm; highest dose tested). Systemic effects of decreased body weight gain, maternal deaths, hepatocellular, adrenal, and thyroid follicular cell hypertrophy were observed. No effects on neonatal survival or growth occurred below the adult toxic levels. Fenbuconazole does not produce birth defects and is not toxic to the developing fetus at doses below those which are toxic to the mother.

4. *Subchronic toxicity*. In a 21–day dermal toxicity study in the rat, the NOEL was greater than 1,000 mg/kg/day, with no effects seen at this limit dose.

5. *Chronic Toxicity*. In 2–year combined chronic toxicity/oncogenicity studies in rats, the NOEL was 80 ppm (3.03 mg/kg/day for males and 4.02 mg/kg/day for females) based on decreased body weight, and liver and thyroid hypertrophy. In a 1–year chronic toxicity study in dogs, the NOEL was 150 ppm (3.75 mg/kg/day) based on decreased body weight, and increased liver weight. The LOEL was 1,200 ppm (30 mg/kg/day). In a 78-week oncogenicity study in mice, the NOEL was 10 ppm (1.43 mg/kg/day). The LOEL was 200 ppm (26.3 mg/kg/day, males) and 650 ppm (104.6 mg/kg/day, females) based on increased liver weights and histopathological effects on the liver. These effects were consistent with chronic enzyme induction from high dose dietary exposure.

A Reference Dose (RfD) for systemic effects at 0.03 mg/kg/day was established by EPA in 1995 based on the NOEL of 3.0 mg/kg/day from the rat chronic study. This RfD adequately protects both adults and children.

6. *Carcinogenicity*. Twenty–four–month rat chronic feeding/carcinogenicity studies with fenbuconazole showed effects at 800 and 1,600 ppm. Fenbuconazole produced a minimal, but statistically significant increase in the incidence of combined thyroid follicular cell benign and malignant tumors. These findings occurred only in male rats following life-time ingestion of very high levels (800 and 1,600 ppm in the diet) fenbuconazole. Ancillary mode–of–action studies demonstrated that the increased incidence of thyroid tumors was secondary to increased liver metabolism and biliary excretion of thyroid hormone in the rat. This mode of action is a nonlinear phenomenon in that thyroid tumors occur only at high doses where there is an increase in liver mass and metabolic capacity of the liver. At lower doses of fenbuconazole in rats, the liver is unaffected and there is no occurrence of the secondary thyroid tumors. Worst–case estimates of dietary intake of fenbuconazole in human adults and children indicate effects on the liver or thyroid, including thyroid tumors, will not occur, and there is a reasonable certainty of no harm.

In support of the findings above, EPA's Science Advisory Board has approved a final thyroid tumor policy, confirming that it is reasonable to regulate chemicals on the basis that there exists a threshold level for thyroid tumor formation, conditional upon providing plausible evidence that a secondary mode of action is operative. This decision supports a widely-held and internationally respected scientific position.

In a 78–week oncogenicity study in mice there was no statistically significant increase of any tumor type in males. There were no liver tumors in the control females and liver tumor incidences in treated females just exceeded the historical control range. However, there was a statistically significant increase in combined liver adenomas and carcinomas in females at the high dose only (1,300 ppm; 208.8 mg/kg/day). In ancillary mode–of–action studies in female mice, the increased tumor incidence was associated with changes in several parameters in mouse liver following high doses of fenbuconazole including: an increase in P450 enzymes (predominately of the CYP 2B type), an increase in cell proliferation, an increase in hepatocyte hypertrophy, and an increase in liver mass (or weight). Changes in these liver parameters as well as the occurrence of the low incidence of liver tumors were nonlinear with respect to dose (i.e., were observed only at high dietary doses of fenbuconazole). Similar findings have been shown with several pharmaceuticals, including phenobarbital, which is not carcinogenic in man. The nonlinear relationship observed with respect to liver changes (including the low incidence of tumors) and dose in the mouse indicates that these findings should be carefully considered in deciding the relevance of high-dose animal tumors to human dietary exposure.

The Carcinogenicity Peer Review Committee (PRC) of the Health Effects Division (HED) classified fenbuconazole as a Group C tumorigen (possible human carcinogen with limited evidence of carcinogenicity in animals). The PRC used a low-dose extrapolation model. The Q1* risk factor applied (1.06×10^{-2} (mg/kg/day)–1) was based on the rat oncogenicity study and surface area was estimated by $(\text{body weight})_{3/4}$.

Since the PRC published the above estimate they have agreed that low-dose extrapolation for fenbuconazole, based on rat thyroid tumors, is inappropriate given the EPA's policy regarding thyroid tumors and the data which exist for fenbuconazole. The PRC agrees that the more appropriate data set for the low-

dose extrapolation and risk factor estimate is the mouse. From these data a Q1* of (0.36 x 10^{-2}(mg/kg/day)–1) is calculated when surface area is estimated by (body weight)$_{3/4}$. All estimates of dietary risk must be adjusted to reflect this change.

Since fenbuconazole is unlikely to leach into groundwater (see below), there is no increased cancer risk from this source. Neither is fenbuconazole registered for residential use, so there is no additional risk from this source either. All estimates of excess risk to cancer are from dietary sources.

7. *Endocrine effects.* The mammalian endocrine system includes estrogen and androgens as well as several other hormone systems. Fenbuconazole does not interfere with the reproductive hormones. Thus, fenbuconazole is not estrogenic or androgenic.

While fenbuconazole interferes with thyroid hormones in rats by increasing thyroid hormone excretion, it does so only secondarily and only above those dietary levels which induce metabolism in the liver. These effects are reversible in rats, and humans are far less sensitive to these effects than rats. The RfD protects against liver induction because it is substantially below the animal NOEL. As noted previously, maximal human exposures are far below the RfD level, and effects on human thyroid will not occur at anticipated dietary levels.

We know of no instances of proven or alleged adverse reproductive or developmental effects to domestic animals or wildlife as a result of exposure to fenbuconazole or its residues. In fact, no effects should be seen because fenbuconazole has low octanol/water partition coefficients and is known not to bioaccumulate. Fenbuconazole is excreted within 48 hours after dosing in mammalian studies.

C. Aggregate Exposure

1. *Food.* The consumer dietary exposure to fenbuconazole residues was estimated for the most recently approved tolerance in bananas (memorandum of E.A. Doyle, 8 February 1995). The EPA used the Theoretical Maximum Residue Contribution (TMRC) for pecans and bananas, and adjusted the TMRC for the stone fruit crop group by excluding plums/prunes and limiting sales volume to 12.8% of the available stone fruit market. From this EPA calculated an upper-bound risk of 0.9 x 10^{-6} for additional cancer risk (Q1* = 1.06 x 10^{-2} (mg/kg/day)-1). (60 FR 27419; 24 May 1995). This estimate does not reflect the change in Q1*. Using the EPA model and the new risk factor based on the mouse data (Q1* = 0.36 x 10^{-2} (mg/kg/day)-1) the dietary risk for currently registered uses is 0.3 x 10^{-6}. The TMRC for existing tolerances utilizes 17% of the RfD for the most sensitive subpopulation, non-nursing infants less than 1–year old. This is unaffected by the change in Q1*.

For wheat, children 1 to 6 years old, not infants, are the highest consumers (g/kg bw/d basis). For children 1–6 the dietary TMRC for existing tolerances utilizes only 5% of the RfD. The dietary TMRC for wheat in this group is estimated to be 0.00016 mg/kg/day and uses 0.52% of the RfD. Additional dietary exposure (TMRC) to fenbuconazole from residues which might be transferred to animal fat and liver from treated wheat is estimated to be 0.00006 mg/kg/day and uses 0.22% of the RfD. No residues occur in animal meats, milk, or eggs. Thus, the TMRC, the worst–case exposure, in the two most sensitive subpopulations of consumers, non–nursing infants less than 1– year old and children 1 to 6 years old, still utilizes less than 18% and less than 6%, respectively, of the fenbuconazole RfD. The dietary TMRCs for other children and for adults utilize less than this.

The calculated additional cancer risk for wheat (Q1* = 0.36 x 10^{-2} (mg/kg/day)–1) has an upper–bound of 0.2 x 10^{-6}. The calculated additional cancer risk for animal fat and liver has an upper–bound of 0.1 x 10^{-6}. The upper bound estimate on excess cancer risk for all uses including wheat is 0.7 x 10^{-6}. The estimate shows that the TMRC, the worst–case exposure, for consumers to fenbuconazole presents a reasonable certainty of no harm. The actual residue contribution is anticipated to be significantly less than this estimate.

2. *Drinking water.* Fenbuconazole has minimal tendency to contaminate groundwater or drinking water because of its adsorptive properties on soil, solubility in water, and degradation rate. Data from laboratory studies and field dissipation studies have been used in the USDA PRZM/GLEAMS computer model to predict the movement of fenbuconazole. The model predicts that fenbuconazole will not leach into groundwater, even if heavy rainfall is simulated. The modeling predictions are consistent with the data from environmental studies in the laboratory and the results of actual field dissipation studies. There are no data on passage of fenbuconazole through water treatment facilities and there are no State water monitoring programs which target fenbuconazole.

3. *Non-Dietary Exposure.* Fenbuconazole has no veterinary applications and is not approved for use in swimming pools. It is not labeled for application to residential lawns or for use on ornamentals, nor is fenbuconazole applied to golf courses or other recreational areas. Therefore, there are no data to suggest that these exposures could occur. Any acute exposures to children would come from dietary exposure or inadvertent dermal contact . As previously discussed, fenbuconazole is neither orally or dermally acutely toxic. Thus, there is a reasonable certainty that no exposure would occur to adults, infants or children from these sources.

D. Cumulative Effects

The toxicological effects of fenbuconazole are related to the effects on rodent liver. These are manifest in rats and mice differently. Fenbuconazole causes liver toxicity in rats and mice in the form of hepatocyte enlargement and enzyme induction. In rats the liver enzyme induction causes increased biliary removal of thyroxin and the hepatotoxicity leads to elevated thyroid stimulating hormone levels with subsequent development of thyroid gland hyperplasia and tumors. This process is reversible and demonstrates a dose level below which no thyroid gland stimulation can be demonstrated in rats. Liver toxicity in the mouse is manifest by hepatocyte enlargement, enzyme induction, and hepatocellular hyperplasia (cell proliferation). These processes are associated with the appearance of a small number of liver tumors. In both cases, rats and mice, the initiating event(s) do not occur below a given dose, i.e., the effects are nonlinear, and the processes are reversible. Therefore, since the tumors do not occur at doses below which hepatocyte enlargement and enzyme induction occur, the RfD protects against tumors because it is substantially below the NOEL for liver effects and maximal human exposures are below the RfD. Effects on human thyroid will not occur at anticipated dietary levels. The mode of action data should be carefully considered in deciding the relevance of these high-dose animal tumors to human dietary exposure.

Extensive data are available on the biochemical mode of action by which fenbuconazole produces animal tumors in both rats and mice. However, there are no data which suggest that the mode of action by which fenbuconazole produces these animal tumors or any other toxicological effect is common to all fungicides of this class. In fact, the closest structural analog to fenbuconazole among registered fungicides of this class is not

tumorigenic in animals even at maximally tolerated doses and has a different spectrum of toxicological effects.

E. Safety Determination

1. *US population*. The Rohm and Haas Company estimates the risk to the U.S. adult population from use of fenbuconazole on wheat as utilizing approximately 0.36% of the RfD. Using the EPA low dose extrapolation model and the risk factor based on the mouse data (0.36 x 10^{-6} (mg/kg/day)-1) the excess cancer risk from dietary sources for fenbuconazole use on wheat and the associated animal commodities is estimated at 0.3 x 10^{-6}. The upper bound estimate on excess cancer risk for all uses including wheat is 0.7 x 10^{-6}.

This assumes that all of the wheat consumed in the U.S. will contain residues of fenbuconazole (in actuality a small fraction of the total crop is likely to be treated). The combined risk for wheat plus registered uses will not exceed either the dietary risk standard established by the Food Quality Protection Act (FQPA) for the US population, (one x 10^{-6}), or the RfD.

The sole acute risk would be for women of childbearing age. The EPA/OREB calculated that the worst-case Margin of Exposure (MOE) for fenbuconazole measured against the developmental LOEL would be greater than 30,000. This is clearly adequate. The MOE would be even higher for consumer dietary exposure from any source. Thus, there is adequate safety for this group and there is a reasonable certainty that no harm will result from fenbuconazole use on wheat.

2. *Infants and children*. The reproductive and developmental toxicity data base for fenbuconazole is complete. There is no selective increase in toxicity to developing animals. Thus, there is no evidence that prenatal and postnatal exposure would present unusual or disproportionate hazard to infants or children. Therefore, there is no need to impose an additional uncertainty factor to protect infants and children.

The EPA calculated the dietary risk to infants and children for existing tolerances. The estimated dietary exposure (TMRC) for this subpopulation is 0.00522 mg/kg/day which represents only 17% of the RfD; no other subgroup used in excess of 17% of the RfD. The EPA estimated lifetime oncogenic risk in the range of one in a million at 0.9 x 10^{-6}, using (Q1* = 1.06x10^{-2} (mg/kg/day)-1). (60 FR 27420; May 24,1995).

For the wheat use the most sensitive subgroup is children 1 to 6 years old and the estimated risk to this subgroup is less than 18% of the RfD. Utilizing the risk factor (Q1* = 0.36x10^{-2} (mg/kg/day)-1), the estimated excess cancer risk for the U.S. population is less than 1 x 10^{-6}. Therefore the wheat use is safe within the meaning of the FQPA and there is a reasonable certainty that no harm will result to infants or children from the approval of fenbuconazole use on wheat.

F. International Tolerances

There are no Codex Maximum Residue Levels (MRLs) for fenbuconazole, but the fenbuconazole database will be evaluated by the WHO and the FAO Expert Panels at the Joint Meeting on Pesticide Residues (JMPR) in September 1997. An Allowable Daily Intake (ADI (RfD)) of 0.03 mg/kg/day is proposed and a total of 36 Codex MRLs are proposed in the data submission.

G. Environmental Fate Summary

Fenbuconazole has little to no mobility in soil (Koc = 4425). It is stable to hydrolysis and aqueous photolysis in buffered solutions, but does degrade photolytically in natural waters and soil (half–life 87 and 79 days, respectively). Laboratory soil metabolism half–lives or DT_{50} values for fenbuconazole range from 29 to 532 days under terrestrial conditions and from 442 to 906 in soil exposed to aquatic conditions. Field-trial soil dissipation studies had half–lives ranging from 157 to 407 days and indicated no significant downward movement of residues. These field trials show fenbuconazole degrades more rapidly outdoors than in laboratory metabolism studies. When material was applied in a single application, fenbuconazole degraded to about 50% of the applied material in less than 60 days. In wheat the DT_{50} in green heads was measured as 18 days and in green wheat stalks the DT_{50} was 84.4 days. These results only reflect foliar dissipation in wheat at the particular growth stage(s) during the study and not at all stages of wheat. The results of residue decline analyses in a number of environmental media support the EPA conclusion that there is no environmental hazard associated with the proposed agricultural use of this chemical.

[FR Doc. 97–24693 Filed 9–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–754; FRL–5735–8]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–754, must be received on or before October 17, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Product Manager (PM) 43, Minor Use, Inerts, Emergency Response Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 274, CM#2, 1921 Jefferson Davis Highway, Arlington, VA., (703) 305–7610. e-mail: jackson.sidney@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–754 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES''.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 5, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. DowElanco Products Co.

PP 5E4573

EPA has received a pesticide petition (PP 5E4573) from the Interregional Research Project number 4 (IR-4), proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Fenarimol, alpha-(2 chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidine methanol, in or on the raw agricultural commodity filbert (hazelnuts) at 0.02 parts per million (ppm).

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue in fenarimol-treated filberts has not been directly determined. Radioactive metabolism studies with apples and cherries indicate that fenarimol is the only significant component of the residue in apples and cherries. The residue of concern is fenarimol.

2. *Analytical method*. Analytical methodology used for filberts is a slight modification of the basic PAM II method for fenarimol (Method R039). Residues are extracted with methanol. Aqueous sodium chloride (5%) is added and the extract is partitioned with dichloromethane. Residues are cleaned up on a Florisil column and detected by GC/ECD. Recoveries ranged from 84–97% in samples fortified with fenarimol at 0.02–0.2 ppm. The limit of detection via this method is >0.02 ppm.

3. *Magnitude of residues*. IR-4 data from 4 residue trials show residues of fenarimol were <0.02 ppm in composite samples of filberts treated at 0.09 pounds active ingredient per acre (lb ai/A) and composite samples treated at 0.18 lb ai/A or two times the proposed maximum application rate. These data indicate that fenarimol residues would not be expected to accumulate to significant levels in filberts. Based on these results and for purposes of this petition, it is appropriate to base the magnitude of total terminal residues and proposed tolerance only on residues of the parent compound, fenarimol.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral lethal dose $(LD)_{50}$ in the rat is 2,500 milligrams (mg)/kilogram (kg) and the acute dermal LD_{50} in the rabbit is >2,000 mg/kg. The inhalation lethal concentration $(LC)_{50}$ in the rat is >2.04 mg/liter(l) of air, which is the highest obtainable respirable aerosol concentration. Fenarimol produced no indications of dermal irritation in rabbits or sensitization in the guinea pig. End use formulations of fenarimol have similar low acute toxicity profiles.

2. *Genotoxicity*. Fenarimol tested negative in several assay systems for gene mutation, structural chromosome aberration and other genotoxic effects. In a micronucleus test in the mouse, fenarimol did produce a significant increase in the percent of polychromatic erythrocytes with micronucleus at 24 hours but not at 48 or 72 hours. Moreover, a second test run at a higher dosage, which produced significant toxicity including death, was unequivocally negative.

3. *Reproductive and developmental toxicity*. A developmental toxicity study in rabbits was negative for teratogenic effects at all doses tested (0, 5, 10, and 35 mg/kg). A developmental toxicity study in rats demonstrated hydronephrosis at 35 mg/kg (doses tested were 0, 5, 10, and 35 mg/kg). A second developmental toxicity study in rats (with a postpartum evaluation) again demonstrated hydronephrosis at 35 mg/kg. Maternal toxicity (decreased body weight) was also observed at the 35 mg/kg/day dose level. The no observed effect level (NOEL) for hydronephrosis and maternal toxicity is 13 mg/kg.

A 3-generation reproduction study in rats dosed at 0, 12.5, 25 or 50 ppm (equivalent to 0, 0.625, 1.25 or 2.5 mg/kg/day) demonstrated decreased fertility in males at 25 ppm and delayed parturition and dystocia in females at 25 and 50 ppm. The NOEL for reproductive effects was 12.5 ppm (0.625 mg/kg/day). The infertility effect in males is considered to be a species-specific effect mediated by the inhibition of aromatase an enzyme which catalyzes the conversion of testosterone to estradiol. Estradiol plays an essential role in the developmental and maintenance of sexual behavior in rats.

Multigeneration reproduction studies in guinea pigs and mice were negative for reproductive effects at the highest dose levels tested 35 mg/kg/day and 20 mg/kg/day, respectively. A NOEL of 35 mg/kg/day for reproductive effects relevant to humans was established based on the NOEL from the multi-generation reproduction study in guinea pigs.

4. *Chronic toxicity*. A 2-year chronic toxicity/carcinogenicity study in rats fed diets containing 0, 50, 130, or 350 ppm (equivalent to 2.5, 6.5, or 17.5 mg/kg/day) with a systemic NOEL of 130 ppm

(equivalent to 6.5 mg/kg/day). An increase in fatty liver changes was observed in rats fed diets containing 350 ppm. There were no carcinogenic effects observed under the conditions of the study.

A second 2-year carcinogenicity study was conducted in rats fed diets containing 0, 12.5, 25, or 50 ppm (equivalent to 0, 0.63, 1.25, or 2.5 mg/kg/day). There was no apparent effect on survival which was reduced in all treatment groups due to chronic respiratory disease. An increase incidence of fatty changes in the liver was observed at the top dose level of 50 ppm, and the NOEL was established as 25 ppm (1.2 mg/kg/day) in this study. A third 2-year study carcinogenicity was conducted at the same dose levels as above. The incidence of liver lesions was similar in the treated and control groups, thus the NOEL for liver effects in this study was greater than 50 ppm (2.5 mg/kg/day).

A 2-year dietary feeding study in mice fed diets containing concentrations of 0, 50, 170, or 600 ppm equivalent to 0, 7, 24.3, or 85.7 mg/kg/day). A 600 ppm dose level was shown to increase liver weight. There was no increase in cancer and no toxicologically significant treatment related effects were observed at any dose level. The NOEL was determined to be 600 parts per million(ppm) (85.7 mg/kg/day).

A 1-year chronic toxicity study in dogs fed diets containing 0, 1.25, 12.5, or 125 mg/kg/day, the NOEL was 12.5 mg/kg/day based upon an increase in serum alkaline phosphatase, increased liver weights, an increase in p-nitroanisole o-demethylase activity, and mild hepatic bile stasis at the high dose level (125 mg/kg/day).

Based on the chronic toxicity data, the Reference Dose (RfD) for fenarimol is established at 0.065 mg/kg/day. The RfD for fenarimol is based on a 2-year chronic feeding study in rats with a NOEL of 6.5 mg/kg/day and an uncertainty factor of 100.

There is no evidence to suggest that fernarimol effects any endocrine system or that fernarimol would elicit neurotoxic response.

5. *Animal metabolism*. Metabolism studies conducted in rats show fenarimol is rapidly metabolized and excreted. Major metabolic pathways were oxidation of the carbinol-carbon atom, the phenyl rings and the pyrimidine ring.

6. *Carcinogenicity*. Fenarimol is classified as Group ''E'' for carcinogenicity (no evidence of carcinogenicity) based on the results of the carcinogenicity studies. There was no evidence of carcinogenicity in 2-year feeding studies in mice and rats at the dosage levels tested. The doses tested were adequate for identifying a cancer risk. Thus, a cancer assessment would not be appropriate.

C. Aggregate Exposure

1. *Dietary (food) exposure*. For the purposes of assessing the potential dietary exposure from use of fenarimol on filberts, an estimate of aggregate exposure is determined by basing the TMRC from previously established tolerances and the proposed tolerance on filberts for fenarimol at 0.02 parts per million(ppm) and assuming that 100% of the filbert crop has a residue of fenarimol at the tolerance level.

Exposure to humans to residues could also result if such residues are transferred to meat, milk, poultry or eggs. Since there is no livestock feed commodities associated with filberts, there is no reasonable expectation that measurable secondary residues of fenarimol will occur in meat, milk, poultry or eggs under the terms of the proposed use. Other established U.S. tolerances for fenarimol on food or feed crops in the United States are established under 40 CFR part 180.421, 40 CFR part 185.3200 and 40 CFR part 186.3200. The use of a tolerance level and 100% of crop treated clearly results in an overestimate of human exposure and a safety determination for use of fenarimol on filberts that is based on a conservative exposure assessment.

2. *Drinking water*. Based upon the available environmental studies conducted with fenarimol wherein it's properties show little potential for mobility in soil and extremely rapid photolysis in water, DowElanco concludes, there is no anticipated exposure to residues of fenarimol in drinking water.

3. *Non-dietary exposure*. The proposed use on filberts involves application of fenarimol to a crop grown in an agricultural environment. Thus, the potential for non-occupational, non-dietary exposure to the general population is not expected to be significant.

D. Cumulative Effects

DowElanco concludes that there is no evidence that there is a common mechanism of toxicity with any other chemical compound or that potential toxic effects of fenarimol would be cumulative with those of any other pesticide chemical. Thus DowElanco believes it is appropriate to consider only the potential risks of fenarimol in its exposure assessment.

E. Safety Determination

1. *U.S. population*. DowElanco has concluded that aggregate exposure to fenarimol will utilize less than 2% of the RfD for the U.S. general population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. DowElanco concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenarimol residues in or on filberts. The complete toxicology profile for fenarimol shows no evidence of physiological effects characteristic of the disruption of the hormone estrogen. Based upon this observation, DowElanco concludes that fenarimol does not meet the criteria for an estrogenic compound.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of fenarimol, data from developmental toxicity studies in rats and rabbits and a multigeneration reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of offspring.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for fenarimol relative to pre- and post-natal effects for children is complete. Further, for fenarimol, the NOEL in the chronic feeding study which was used to calculate the RfD (6.5 mg/kg/day used by EPA or 1.2 mg/kg/day used by The World Health Organization) is already lower than the NOELs from the developmental studies in rats and rabbits.

Concerning the multi-generation reproduction study, the effects on reproduction are considered to be specific effect caused by aromatase inhibition. The aromatase enzyme promotes normal sexual behavior in rats and mice, but not in guinea pigs, or primates (including humans). A NOEL of 35 mg/kg/day for reproductive effects

relevant to humans was established based on the NOEL from the multi-generation reproduction study in guinea pigs. In addition, a NOEL of 13 mg/kg/day for developmental effects was established based upon the NOEL from the teratology study in rats. Therefore, DowElanco concludes that an additional uncertainty factor is not needed and that the RfD at 0.065 mg/kg/day is appropriate for assessing risk to infants and children.

Using the exposure assumptions previously described, the percent RfD utilized by the aggregate exposure to residues of fenarimol from previously established tolerance and the proposed tolerance on filberts is less than 2% for children 1 to 6 years of age, the population subgroup most highly exposed to dietary residues of fenarimol. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, DowElanco concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fenarimol on filberts.

F. International Tolerances

A temporary tolerance of 0.02 ppm for fenarimol on pecans; and a 0.1 ppm Mexican limit for fenarimol on walnuts exist. Since there are not Codex, Mexican or Canadian limits for fenarimol on filberts, international compatibility is not considered to be at issue.

2. ISK Biosciences Corporation

PP 2E4042, 2E4018 and 6E4672

EPA has received pesticide petitions (PP 2E4042, 2E4018 and 6E4672) from the Interregional Research Project Number 4 (IR-4), proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of Chlorothalonil (tetrachloroisophthalonitrile) and its metabolite 4-hydroxy-2,5,6-trichloro-isophthalonitrile in or on the raw agricultural commodities at levels of 0.1 parts per million(ppm) for asparagus, 1.0 ppm for mangoes, and 0.2 ppm for pistachios.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue of chlorothalonil in asparagus, mangoes and pistachios is adequately understood. The parent compound and its metabolite (4-hydroxy-2,5,6-trichloro-isophthalonitrile) are the regulated residues. Chlorothalonil is not systemic in plants.

2. *Analytical method*. An adequate analytical method (gas chromatography) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual, Vol. II (PAM II).

3. *Magnitude of residues*. Residue data from studies conducted with asparagus, mangoes and pistachios support the proposed tolerances for combined residues of chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloro-isophthalonitrile in/on these raw agricultural commodities.

B. Toxicological Profile

1. *Acute toxicity*. Acute toxicity studies on technical grade chlorothalonil show: an oral lethal dose $(LD)_{50}$ >10,000 milligrams(mg)/kilogram(kg) (Toxicity Category IV) in rats; a dermal LD_{50} >10,000 mg/kg (Toxicity Category IV) in rabbits; a four-hour inhalation lethal concentration $(LC)_{50}$ of 0.092 mg/L in female rats and 0.094 mg/L in male rats (Toxicity Category II); and a primary eye irritation study showing chlorothalonil as corrosive causing irreversible eye effects (Toxicity Category I) in the rabbit at 21 days. Chlorothalonil was shown not to be a dermal irritant (Toxicity Category IV) in a primary dermal irritation study in rabbits and not a skin sensitizer in a dermal sensitization study in guinea pigs.

2. *Genotoxicity*. Mutagenicity studies with chlorothalonil include gene mutation assays in bacterial and mammalian cells; in vitro and in vivo chromosomal aberration assays; DNA repair assays in bacterial systems; and cell transformation assays. All were negative with the following two exceptions:

Chlorothalonil was positive in an *in vitro* chromosomal aberration assay in chinese hamster ovary (CHO) cells without metabolic activation but was negative with metabolic activation. *In vivo* chromosomal aberration studies in rats and mice were negative and one study in the Chinese hamster was equivocal. These results suggest that chlorothalonil is not mutagenic and does not have clastogenic potential in intact mammalian systems.

In bacterial DNA repair tests, chlorothalonil was negative in *Bacillus subtilis*, but was positive in *Salmonella typhimurium*. In an *in vivo* DNA binding study in rats with ^{14}C-chlorothalonil, there was no covalent binding of the radiolabel to the DNA of the kidney, the target organ for chlorothalonil toxicity in rodents.

3. *Reproductive and developmental toxicity*. A developmental toxicity study with rats fed doses of 0, 25, 100, and 400 mg/kg body weight/day from days 6 through 15 of gestation resulted in a no observed effect level (NOEL) for maternal toxicity of 100 mg/kg/day based on increased mortality, reduced body weight, and a slight increase in early resorptions at the highest dose. There were no developmental effects observed at any dose in this study.

A developmental toxicity study in rabbits fed doses of 0, 5, 10, or 20 mg/kg/day on days 7 through 19 of gestation resulted in a maternal NOEL of 10 mg/kg/day. Effects observed in the dams in the high-dose group were decreased body weight gain and reduced food consumption. There were no developmental effects observed in this study.

A two-generation reproduction study in rats fed diets containing 0, 500, 1,500 and 3,000 ppm resulted in a reproductive NOEL of 1500 ppm (equivalent to 115 mg/kg/day) based on lower neonatal body weights by day 21. There were no effects seen on any other reproductive parameter at any dose level in this study.

4. *Subchronic toxicity*. A subchronic toxicity study was conducted in rats at doses of 0, 1.5, 3.0, 10 and 40 mg/kg/day for 13 weeks. Treatment related hyperplasia and hyperkeratosis of the forestomach was observed at the two highest dose levels. Initial histopathological evaluation did not demonstrate any nephrotoxicity, however, a subsequent evaluation observed a treatment-related increase in hyperplasia of the proximal tubule epithelium at 40 mg/kg/day. Based on these findings, the NOEL was 3.0 mg/kg/day and the lowest observed effect level (LOEL) in rats was 10.0 mg/kg/day.

A 90-day oral toxicity study was conducted in dogs with dose levels of technical chlorothalonil of 15, 150 and 750 mg/kg/day. The two highest dosages resulted in lower body weight gain in male dogs. The NOEL was 15 mg/kg/day, and the LOEL was 150 mg/kg/day based on decreased body weight gain in males.

Two 21-day dermal toxicity studies were conducted with technical chlorothalonil. In the initial study, rabbits were dosed at 50, 2.5 and 0.1 mg/kg/day. The NOEL and LOEL for systemic effects and dermal effects were both greater than 50 mg/kg/day. The NOEL for dermal irritation was 0.1 mg/kg/day. A subsequent 21-day dermal study was conducted in male rats, to specifically evaluate the potential for nephrotoxicity in this laboratory species following dermal dosing. In this study the doses were 60, 100, 250 and 600 mg/kg/day. The NOEL for nephrotoxicity was greater than 600 mg/kg/day.

Estrogenic effects. ISK Biosciences concludes that based upon all of the chronic toxicity, developmental toxicity, mutagenicity and reproductive studies conducted with chlorothalonil and its metabolites, results did not indicate any potential to cause estrogenic effects, or endocrine disruption.

5. *Chronic toxicity*. A 12-month chronic oral toxicity study in Beagle dogs was conducted with technical chlorothalonil at dose levels of 15, 150 and 500 mg/kg/day. The no observed adverse effect level (NOAEL) was 150 mg/kg/day based on lower blood albumin levels at the highest dose. There was no nephrotoxicity observed at any dose in this study.

A chronic feeding/carcinogenicity study with Fischer 344 rats fed diets containing 0, 800, 1,600 or 3,500 ppm (equivalent to 0, 40, 80 or 175 mg/kg body weight (body weight (bwt))/day) for 116 weeks in males or 129 weeks in females, resulted in a statistically higher incidence of combined renal adenomas and carcinomas. At the high dose, which was above the maximum tolerated dose (MTD), there was also a statistically significant higher incidence of tumors of the forestomach in female rats.

In a second chronic feeding/carcinogenicity study with Fischer 344 rats, designed to define the NOEL for tumors and the preneoplastic hyperplasia, animals were fed diets containing 0, 2, 4, 15 or 175 mg/kg/day. The NOEL in this study, based on renal tubular hyperplasia, was a nominal dose of 2 mg/kg body weight (bwt)/day. Because of the potential for chlorothalonil to bind to diet, the 2 mg/kg bwt/day dose, expressed as unbound chlorothalonil is 1.8 mg/kg body weight(bwt)/day. The NOEL for hyperplasia and hyperkeratosis of the forestomach was 4 mg/kg body weight(bwt)/day or a dose of 3.8 mg/kg bwt/day based on unbound chlorothalonil.

A 2-year carcinogenicity study in CD-1 mice at dietary levels of 0, 750 and 1,500 or 3,000 ppm (equivalent to 0, 107, 214 or 428 mg/kg/day), resulted in a statistically higher incidence of squamous cell carcinomas of the forestomach in both sexes, and a statistically higher incidence of combined renal adenomas/carcinomas in only the male mice receiving the low dose. There were no renal tumors in any female mouse in this study.

A 2-year carcinogenicity study in male CD-1 mice for the purpose of establishing the no effect level for renal and forestomach effects, was conducted at dietary levels of 0, 10/15, 40, 175, or 750 ppm (equivalent to 0, 1.4/2.1, 5.7, 25 or 107 mg/kg/day). The NOEL level for renal effects was 40 ppm and the NOEL for forestomach effects was 15 ppm.

The Agency classifies and regulates chlorothalonil as a B2 (probable human carcinogen). This classification was based on statistically significant increases in the incidence of renal adenomas and carcinomas in male and female Fisher 344 rats, a statistically significant increase in combined renal adenoma/carcinoma of the forestomach in male and female Osborne-Mendel rats, and statistically significant increases in carcinoma of the forestomach in male and female CD-1 mice, as well as positive dose-related trend for combined renal adenoma/carcinoma in male mice.

A carcinogenic potency factor, Q1*, of 0.00766 $(mg/kg/day)^{-1}$ is used by the Agency when conducting mathematical modeling to estimate carcinogenic risk to humans. The carcinogenic potency factor was calculated based upon female rat renal (adenoma and/or carcinoma) tumor rates.

The Agency is currently evaluating recently submitted mechanistic data in connection with the registrants' assertions regarding the carcinogenicity of chlorothalonil. No conclusions are available at this time.

Reference Dose (RfD): A RfD of 0.02 mg/kg/day was determined based on the NOEL of 2 mg/kg/day established in a 2-year dietary study in rats and using an uncertainty factor of 100.

The no effect level (NOEL) for chlorothalonil is based on the nephrotoxicity observed in the chronic rat study. The Agency considers the NOEL to be 2.0 mg/kg/bwt, which is the nominal dose.

No effect levels for maternal toxicity from developmental studies are 10 mg/kg body weight (bwt) in rabbits and 100 mg/kg body weight (bwt) in the rat. The no effect level for pup growth in the reproduction study was 1,500 mg/kg body weight(bwt) which would be most conservatively estimated as equating to approximately 75 mg/kg/bwt.

6. *Animal metabolism*. Approximately 33% of chlorothalonil at dose levels at or below 50 mg/kg was orally absorbed. Of this amount, 80 to 90% was eliminated in the feces and 15–20% of the dose was excreted into the bile. No significant levels of chlorothalonil were found in any tissues. The compound was metabolized primarily via glutathione conjugation (mono, di and triglutathione conjugates; possibly tetra). These conjugates were excreted directly into bile; some were shown to have been transported to the kidneys where they were cleaved to thio metabolites, the excretion of which was rate-limited, and therefore, could lead to nephrotoxicity.

7. *Metabolite toxicology*. The primary metabolite of chlorothalonil is 4-Hydroxy-2,5,6-Trichloroisophthalonitrile (4-OH or SDS-3701). The toxicity data base for SDA-3701 is adequate. Two data gaps currently exist for a 1-year chronic toxicity study in dogs and a developmental toxicity study in rats. SDS-3701 has been show to be a minor residue in soil and rotated crops. The existing toxicity data base can be summarized as follows:

a. *Acute toxicity*. The acute oral LD_{50} for male rats was 422 mg/kg and for female rats was 242 mg/kg, with the combined sexes value being 332 mg/kg.

b. *Subchronic toxicity*. Sprague-Dawley rats dosed with SDS-3701 at 0, 0.5, 2.5, 5 or 10 mg/kg/day in a 4-month feeding study resulted in a NOEL at 5 mg/kg/day and the LOEL at 10 mg/kg/day based on depressed body weight and an increase in liver weight. Sprague-Dawley rats of both sexes dosed for 61-69 days at doses of 0, 10, 20, 40, 75, 125, 250, 500 or 750 mg/kg/day. The NOEL was 20 mg/kg/day and the LOEL was 40 mg/kg/day based on decreased body weights, anemia and renal cortical atrophy. In a 3-month feeding study in beagle dogs with SDS-3701 fed at 0, 1.25, 2.5 or 5.0 mg/kg/day, the NOEL was 2.5 mg/kg/day and the LOEL was 5.0 mg/kg/day based on renal tubular degeneration and vacuolation in males.

c. *Chronic toxicity and carcinogenicity*. In a 2-year study SDS-3701 was fed to Sprague-Dawley rats at 0, 0.5, 3.0, 15 (reduced to 10 at week 30) or 30 (reduced to 20 at week 30) mg/kg/day. The NOEL was 3.0 mg/kg/day. The LOEL was 10 mg/kg/day based on reduced body weight, microcyticanemia, hemosiderin and decreased serum potassium. In a 2-year study with CD-mice and SDS-3701 were fed at 0, 54, 107 or 214 mg/kg/day, the NOEL was not established; the LOEL was <54 mg/kg/day based on increased liver-to-body weight ratios in males. In both the above studies, there was no evidence of carcinogenicity in either sex.

d. *Developmental toxicity*. SDS-3701 was fed to pregnant Dutch Belted rabbits at dose levels of 1, 2.5, or 5 mg/kg/day on gestation days six through fifteen. For maternal toxicity the NOEL was 1 mg/kg/day and the LOEL was 2.5 mg/kg/day based on a dose dependent increase in maternal death and abortion. The developmental toxicity NOEL was 5 mg/kg/day. No LOEL was established.

e. *Reproductive toxicity*. In a 1-generation reproduction study, SDS-3701 was fed to Sprague-Dawley CD rats at 0, 0.5, 1.0, 1.5, 3.0 or 6.0 mg/kg/day. For paternal systemic toxicity, the NOEL was 1.5 mg/kg/day. In a 3-generation reproduction study with the same rat species fed SDS-3701 at 0, 0.5, 3.0, or 6.25 mg/kg/day the parental systemic NOEL was 0.5 mg/kg/day. In both the 1 and 3-generation studies the LOEL was the same, 3.0 mg/kg/day based on reduced weaning body weight and the reproductive toxicity NOEL was similar at 6.0 and 6.25 mg/kg/day.

f. *Mutagenicity*. SDS–3701 did not cause DNA damage in *S. Typhimurium* or induce a mutagenic response when tested in this species or in tests with cultured Chinese hamster V 79 cells or BALB/3T3 mouse fibroblasts. No evidence of mutagenesis was found in host mediated assay using *S. typhimurium* tester strains and mice exposed daily for 5 days to 6.5 mg/kg/day of the compound.

C. Aggregate Exposure

1. *Dietary exposure*. Available information on anticipated residues was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC) from each existing use. Potential dietary exposure determinations were based on estimates of anticipated residues of chlorothalonil in food and drinking water.

a. *Food*. Chlorothalonil would be applied to asparagus ferns which regrow after harvest of the spears to protect the ferns from diseases. There is no harvest until the following crop season and little chance of chemical residues of chlorothalonil or its major metabolite on the spears. ISK Biosciences determined that anticipated actual residues of chlorothalonil on asparagus spears would be 0.0000000891 mg/kg body weight(bwt)/day to the U.S. population and 0.0000000719 mg/kg body weight(bwt)/day to children ages 1–6.

Chlorothalonil would be applied to mango trees during the growing season for control of diseases. ISK Biosciences determined that anticipated actual residues of chlorothalonil on mangoes would be 0.0000000633 mg/kg body weight(bwt)/day to the U.S. population and 0.000000129 mg/kg body weight(bwt)/day to children ages 7–12.

Chlorothalonil would be applied to pistachio trees during the growing season for control of diseases. The nuts used for human consumption are not directly exposed to the sprays. Thus, there is little chance of significant levels of residues of chlorothalonil or its major metabolite on pistachio nutmeats. ISK Biosciences determined that anticipated actual residues of chlorothalonil on pistachios would be 0.0000000167 mg/kg body weight(bwt)/day to the U.S. population and 0.0000000304 mg/kg body weight(bwt)/day to children ages 1–6.

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat, fat, or meat byproducts of livestock or poultry as a result of this action; there are no livestock feed items associated with asparagus, mangoes or pistachios.

ISK Biosciences believes that exposure, based on the current registered uses for chlorothalonil, is 0.0000642 mg/kg body weight(bwt)/day for the general U.S. population and 0.000105 mg/kg body weight(bwt)/day for infants and children 1–6 years of age. For all published and pending tolerances, the respective exposures are 0.0000651 mg/kg body weight(bwt)/day and 0.000106 mg/kg body weight(bwt)/day.

b. *Drinking water*. Results of monitoring studies in the National Survey of Pesticides in Drinking Water Wells conducted by EPA showed that no chlorothalonil residues were detected in any of the 1,300 community water systems and domestic wells (using methodology for chlorothalonil having a limit of detection (LOD) of 0.06 micro grams(µg/l) and limit of quantitation of 0.12 µg/l). The absence of chlorothalonil detections in the National Survey suggests that chlorothalonil is not a contaminant in drinking water wells and that the population is not exposed to chlorothalonil in these water sources. These findings are consistent with the physical and chemical properties of chlorothalonil, including low water solubility (0.9 ppm) and high affinity for organic matter including soil. It has also been demonstrated that chlorothalonil does not leach into groundwater from applications made to growing crops.

Aerobic aquatic metabolism studies with chlorothalonil establish a half-life in natural aquatic habitats of less than 10 hours, depending on environmental conditions. The short half-life of chlorothalonil in natural water/sediment systems and practiced water treatment techniques prior to consumption, suggest that chlorothalonil is not likely to be present in drinking water obtained from natural surface water systems.

An exposure estimate, based on surface water concentration recently cited by EPA, would conclude that the average concentration in surface water would be less than 0.002 parts per billion (ppb). Assuming that everyone in the US consumed untreated surface water, the exposure to chlorothalonil of the general population would be less than 0.00000058 mg/kg body weight(bwt)/day. This would be a worst case scenario, which would greatly overestimate exposure.

2. *Non-dietary exposure*. Potential non-dietary exposures to chlorothalonil may result from the following uses of chlorothalonil. In each case, the exposure would be from the dermal route and only for an intermittent duration. The two 21-day dermal studies that have been conducted in the rabbit and rat indicate that there is no nephrotoxicity associated with the dermal exposure to chlorothalonil at dose levels up to 600 mg/kg/day. Therefore, ISK Biosciences concludes the exposures from the uses of chlorothalonil listed below, would not be expected to add to the carcinogenic risk associated with chlorothalonil.

a. *Residential owner uses*. ISK Biosciences contends that application of chlorothalonil to home lawns and gardens represents minor uses and would be expected to present very little potential for homeowner exposure.

b. *Paint*. Chlorothalonil is used in paints and stains for control of mildew and molds on exterior surfaces of buildings and occasionally for interior paints. The company estimates that only about 2% of the chlorothalonil used in paint is used in interior paint and only 0.2% or less of interior paints in the United States contains chlorothalonil. In paints chlorothalonil is tightly bound within the paint matrices; thus, effective control of mildew may last for several years and the potential for exposure is very limited.

c. *Grouts*. Chlorothalonil is used in cement tile grouts, also for control of mildew and molds. Chlorothalonil is bound within the grout matrices and presents little exposure opportunity. This is a minor use of chlorothalonil and non-occupational dermal exposure of humans to chlorothalonil from this source is extremely low.

d. *Wood treatment*. Chlorothalonil is used for control of sapstain as a surface treatment on rough-cut, newly-sawn lumber to protect it from molds and mildews while drying. Chlorothalonil does not occur in structural wood used for residential or occupational scenarios.

D. Cumulative Effects

ISK Biosciences has considered the potential for cumulative effects of chlorothalonil and other substances that have a common mechanism of toxicity. Chlorothalonil is a halogenated benzonitrile fungicide which readily undergoes displacement of chlorine in

the 2, 4 and 6 positions by glutathione and other thiol containing amino acids and proteins. In the rat, the glutathione conjugates are sufficiently absorbed from the gut and subsequently metabolized to form di- and tri-thiol metabolites which may produce a nephrotoxic effect. In dogs where this absorption and subsequent metabolism to di- and tri-thiol metabolites does not occur, nephrotoxicity does not occur. ISK Biosciences does not have any information to indicate that toxic effects observed in rats occur through a mechanism which is common to any other agricultural chemical. Thus, it appears inappropriate to group chlorothalonil with any other pesticide at this time.

E. Safety Determination

1. *U.S. population*.Exposure to anticipated actual residues of chlorothalonil on asparagus, as discussed above, would represent only 0.0005% of the RfD (0.018 mg/kg/day) in the diets of the U.S. population with a corresponding carcinogenic risk of 6.8 X 10^{-10}.

Exposure to anticipated actual residues of chlorothalonil on mangoes, as discussed above, would represent only <0.0004% of the RfD (0.018 mg/kg/day) in the diets of the U.S. population with a corresponding oncogenic risk of 4.8 X 10^{-10}. For infants and children ages 1–6, residues on mangoes would represent <0.0008% of the RfD. Exposure to anticipated actual residues of chlorothalonil on pistachios, as discussed above, would represent only <0.0001% of the RfD (0.018 mg/kg/day) in the diets of the U.S. population with a corresponding oncogenic risk of 6.8 X 10–$^{-10}$. For infants and children ages 1–6, residues on pistachios would represent <0.0002% of the RfD.

All published and pending tolerances for chlorothalonil utilize less than 1% of the RfD for all segments of the U.S. population with corresponding oncogenic risks of 5.0 X 10^{-7} for the general U.S. population.

Because the worst case assumptions for human exposure from drinking water indicate that exposure would be only 1% of the dietary exposure, the risk assessment is not significantly altered by considering the exposure from drinking water.

2. *Infants and children*. There is a complete database for chlorothalonil which includes pre- and post-natal developmental toxicity data as well as mechanistic data related to the rodent specific nephrotoxicity observed in subchronic and chronic studies. The toxicological effects of chlorothalonil in rodents are well understood. Chlorothalonil has a low level of toxicity in dogs.

In a two-generation reproduction study in rats, all reproductive parameters investigated showed no treatment-related effects except pup weight gain. Specifically, the weights of pups exposed to chlorothalonil were comparable to controls at parturition through day four of lactation. It was only after day four of lactation, when the pups begin to consume the test diet, that body weight gain lags behind controls. This only occurred at the highest dose tested; 3,000 ppm. The dose of chlorothalonil the pups would receive would be far in excess of the estimated adult dose of 150 mg/kg body weight(bwt)/day (3,000 ppm ÷ 20). The doses for the pups could have easily exceeded 500 mg/kg body weight (bwt)/day. Dose levels of 375 mg/kg body weight (bwt) and above have been shown to significantly affect body weight in the rat. Therefore, the reduction of body weight gain observed in the reproduction study is considered to be comparable to the effects that have been observed in older rats. The NOEL for this effect was 1,500 ppm.

In developmental toxicity studies conducted in the rat and the rabbit, chlorothalonil did not cause any developmental effects even at dose levels that produced significant maternal toxicity. In the rabbit a dose level of 20 mg/kg body weight (bwt) caused maternal toxicity, but there were no developmental effects and in the rat, a dose level of 400 mg/kg body weight (bwt) caused maternal toxicity without developmental toxicity.

The extensive data base that is available for chlorothalonil is devoid of any indication that chlorothalonil would represent any unusual or disproportionate hazard to infants or children. Therefore, ISK Biosciences believes that there is no need to impose an additional 10X safety factor for infants or children and argues that the standard uncertainty factor of 100X should be used for all segments of the human population when calculating risks associated with chlorothalonil.

F. International Tolerances

A maximum residue level has not been set for chlorothalonil on pistachios by the Codex Alimentarius Commission.

3. Zeneca Ag Products

PP 6E4653

EPA has received a pesticide petition (PP 6E4653) from the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide sodium salt of fomesafen (also referred to in this document as fomesafen, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-*N*-(methylsulfonyl)-2-nitrobenzamide, in or on the raw agricultural commodity snap beans at 0.05 parts per million (ppm).

A. Residue Chemistry

1. *Plant metabolism*. Fomesafen metabolism has been extensively studied in soybeans. Once in the plant, fomesafen shows very rapid metabolism with either cleavage or conjugation of the intermediate degradation products to a complex mixture of low level degradation products. There is no significant translocation. For purposes of regulation, the parent compound fomesafen is the residue of concern on harvested bean crops.

2. *Analytical method*. The method of analysis uses High Pressure Liquid Chromatography. It is method GAM-RM-001/86, which was developed for analytical work on soybeans and adapted for use on snap beans. The limit of detection of the analytical method is 0.025 ppm.

3. *Magnitude of residues*. Residue data are available for fomesafen applied post-emergence on snap beans at the maximum label rate of 0.375 pounds active ingredient/acre (lb ai/A). The residue field trials were conducted by the IR-4 project in the States of Florida, North Carolina, New York, Oregon, and Wisconsin, representing approximately 50% of the national snap bean acreage. Each treated plot received a single post-emergence, prebloom application at either 0.25 or 0.375 lb ai/A. Four snap bean samples per treatment were collected from each trial. Samples were harvested 22 to 31 days after treatment, a normal range for snap beans. There are no detectable residues in snap beans when fomesafen is applied up to 0.375 lb ai/A prior to pod development, pre-bloom application.

Based on the results of the poultry and ruminant metabolism studies, fomesafen is rapidly metabolized and excreted. There are no expected residues of fomesafen in meat, milk, or eggs. Snap beans are not a significant livestock feed commodity.

B. Toxicological Profile

1. *Acute toxicity*. The acute toxicity profile of technical fomesafen is low by oral, dermal and inhalation routes. Similarly the formulated fomesafen

product (REFLEX) is of low oral, dermal and inhalation toxicity but is classed as Category I toxicity based on the highest hazard, severe eye irritancy. Fomesafen is not a skin sensitizer and only a slight irritant to the skin.

Results of the acute toxicity testing with REFLEX show acute oral in the rat lethal dose $(LD)_{50}$ > 2,000 milligram (mg)/kilogram (kg), acute dermal in the rabbit LD_{50} > 2,000 mg/kg, acute inhalation in the rat LD_{50} > 5.48 mg/liter (L), eye irritation in the rabbit showed severe irritancy, and skin irritation in the rabbit showed a slight irritancy. REFLEX is not a skin sensitizer.

2. *Genotoxicity*. Fomesafen tested negative in assay systems for gene mutation, structural chromosome aberration and other genotoxic effects. However fomesafen did produce a weak clastogenic response in the rat bone marrow when the analysis of the data was undertaken with gap-type aberrations both included and excluded.

In the registrant's view, gap-type aberrations (small discontinuities in the staining of the chromosomes, as distinct from breaks), do not indicate significant chromosomal damage and should be excluded from the evaluation of such assays. Their conclusion therefore is that these data should be considered to indicate no clastogenic effect of fomesafen with no biologically significant genotoxic effects.

3. *Reproductive and developmental toxicity*. In a 2-generation reproduction study in rats fed diets containing 0, 50, 250 or 1,000 ppm fomesafen (equivalent to 2.5, 12.5 or 50 mg/kg/day) no reproductive effects were observed. The no observed effects level (NOEL) for systemic toxicity (reduction in body weight gain and liver necrosis) is established at 250 ppm for this study.

In a developmental toxicity study in rats given oral doses of fomesafen at 0, 50, 100, or 200 mg/kg/day on gestation days 6 to 15 there was no developmental toxicity and the NOEL was established at 50 mg/kg/day, following evaluation of a second study at lower doses.

A developmental toxicity study in rabbits given oral doses of 0, 2.5, 10, or 40 mg/kg/day on gestation days 6 to 18 with no developmental toxicity.

4. *Subchronic toxicity*. Subchronic oral toxicity studies in the rat (90-day) and dog (26 weeks) show that the liver is the primary target of toxicity in both sexes. Rats were dosed at 1, 5, 100, and 1,000 ppm in the diet. The lowest observed effect level (LOEL) in this study was 100 ppm (5 mg/kg/day) and the NOEL was 5 ppm (0.25 mg/kg/day). The dogs were dosed at 0.1, 1 and 25 mg/kg/day. The LOEL in this study was 25 mg/kg/day and the NOEL was 1 mg/kg/day.

A 21-day dermal toxicity study in the rabbit at doses of 10, 100, and 1,000 mg/kg/day showed moderate to severe skin irritation at the application site but no systemic effects at doses up to 1,000 mg/kg/day. The LOEL for skin irritation was 100 mg/kg/day and the NOEL was 10 mg/kg/day.

5. *Chronic toxicity*. Beagle dogs were administered fomesafen in gelatin capsules at dose levels of 0, 0.1, 1.0 or 25 mg/kg body weight (bwt)/day for 26 weeks with a NOEL of 1.0 mg/kg/day. There were no deaths, no clinical signs of toxicity and no treatment related effects on bodyweight or food consumption. Evidence of toxicity was observed at 25 mg/kg/day. Hypolipidemia was present in dogs of both sexes. At autopsy liver weight was increased at 25 mg/kg/day; microscopic examination revealed eosinophilic damage and peroxisome proliferation in both sexes.

A 2-year feeding/carcinogenicity study with rats fed diets containing 0, 5, 100, or 1,000 ppm of fomesafen gave a NOEL for systemic effects of 5 ppm (0.25 mg/kg/day). At the lowest-effect level (LEL) 100 ppm (5 mg/kg/day) there were minor changes associated with liver toxicity. There were no carcinogenic effects observed under the conditions of the study.

A carcinogenicity study was conducted in CD-1 mice fed diets containing 0, 1, 10, 100 or 1,000 ppm fomesafen (equivalent to 0.15, 1.5, 15 or 150 mg/kg/day) for up to 89 weeks. Increased mortality was seen at 1,000 ppm in both males and females and liver weights were increased at 100 and 1,000 ppm. A dose-related increase in the incidence of benign and malignant hepatocellular tumors was observed. Both tumor types were statistically significant in males and females at 1,000 ppm. At the 100 ppm feeding level (male and female), the increased incidence was confined to benign tumors. The increase in benign liver tumors at 1 ppm in males only was not considered related to fomesafen, due to the lack of any increase at 10 ppm.

The Agency has classified fomesafen as a Group C carcinogen (possible human carcinogen) with a potency factor (Q1*) of 0.0019 mg/kg/day.

6. *Animal metabolism*. Fomesafen is well absorbed and completely metabolized in the rat. Excretion is rapid with 90% of the compound excreted within 7 days of ingestion. There is no accumulation of fomesafen.

7. *Metabolite toxicology*. Toxicity testing results for the fomesafen parent compound is indicative of any metabolites, either in the plant or animal.

C. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure, ZENECA estimated aggregate exposure based on the tolerance for fomesafen on soybeans and snap beans at 0.05 ppm. Dietary exposure to residues of fomesafen in or on food will be limited to residues on soybean and snap beans. Based on the animal metabolism data, and because there are no residues on the crops at time of harvest, the company has concluded that there is reasonable expectation that no measurable residues of fomesafen will occur in meat, milk, poultry, or eggs from this use. There are no other established U.S. tolerances for fomesafen.

2. *Food*. On the bases of the Group C carcinogen classification of fomesafen the upper-bound carcinogenic risk from dietary exposure to fomesafen was calculated using a potency factor (Q*) of 0.19 $(mg/kg/day)^{-1}$ and dietary exposure as estimated by the Anticipated Residue Contribution (ARC) for existing tolerances and the proposed tolerance for snap beans. The upper-bound carcinogenic risk from established tolerances and the proposed tolerance for snap beans is calculated at 1.56×10^{-6} for the U.S. Population. The upper-bound carcinogenic risk from the proposed use on snap beans is calculated at 1.4×10^{-6}. Therefore, the potential cancer risk from residues of fomesafen resulting from the combined established tolerance on soybeans and the proposed tolerance for snap beans is negligible.

3. *Drinking water*. Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Field dissipation data and a prospective groundwater study indicate that fomesafen is persistent and has the potential to leach to groundwater. There is no established Maximum Concentration Level (MCL) for residues in drinking water. No drinking water health advisory has been established.

Risk of contaminating surface water. Zeneca contends that fomesafen is unlikely to enter surface water bodies to any significant degree except by direct accidental over-spray. Should this arise, fomesafen will be readily degraded by a number of contributory processes. Fomesafen is not persistent in water in sunlit aquatic conditions. All these processes will ensure that any fomesafen entering surface water bodies will be short-lived and will not result in

any significant contamination of potential drinking water sources.

Therefore, Zeneca concludes that potential exposures from residues of fomesafen in drinking water added to the current dietary exposure will not present significant risk to the U.S. population.

4. *Non-dietary exposure*. Since fomesafen is not registered for residential or turf uses, exposures from other than dietary or occupational sources are extremely unlikely. At this time there are no reliable data to assess the potential risk from non-dietary sources.

D. Cumulative Effects

Fomesafen is a diphenyl ether class of chemicals. At this time, EPA has not made a determination that fomesafen and other compounds have a common mechanism of toxicity resulting in cumulative effects. Therefore, aggregate exposure is evaluated on the uses of fomesafen only.

E. Safety Determination

1. *U.S. population*. The Reference Dose (RfD) for fomesafen has not been established by the Agency's. For purposes of this action, the RfD is calculated at 0.0025 mg/kg of body weight/day. The RfD is based on a NOEL of 0.25 mg/kg/day from the rat feeding/carcinogenicity study and an uncertainty factor of 100. The ARC for the overall U.S. population from established tolerances and the proposed tolerance for snap beans utilizes 1.4% of the RfD. EPA generally has no concern for exposures below 100% of the RfD.

The upper-bound carcinogenic risk from established tolerance on soybeans and the proposed tolerance for snap beans is calculated at 1.56×10^{-6} for the U.S. population, based on the available market share data. The upper-bound carcinogenic risk from the proposed use on snap beans is calculated at 1.4×10^{-6}. Therefore, Zeneca believes that the potential cancer risk from residues of fomesafen resulting from the combined established tolerance on soybeans and the proposed tolerance for snap beans is negligible.

2. *Infants and children*. Zeneca noted that the potential for additional sensitivity for infants and children to residues of fomesafen have been considered based on the three-generation reproductive study in rats and the developmental toxicity studies in rat and rabbit. Zeneca concluded that fomesafen showed no evidence of reproductive toxicity and caused no developmental toxicity in the rabbit or in the rat.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete for fomesafen. Zeneca AG Products concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to fomesafen.

F. International Tolerances

There are no Codex Maximum Residue Levels established for fomesafen residues.

[FR Doc. 97–24692 Filed 9–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–763; FRL–5742–9]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–763, must be received on or before October 17, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Beth Edwards, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 206, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5400; e-mail: edwards.beth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–763] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [pf–763] and appropriate petition number. Electronic comments on this notice may be filed

online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:September 8,1997

James Jones, Acting

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

E.I. duPont de Nemours & Co.

PP 7F4859

EPA has received a pesticide petition (PP 7F4859) from E.I. duPont de Nemours & Co.(DuPont), P.O. Box 80038, Wilmington, DE 19880–0038, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of esfenvalerate, (Asana XL Insecticide), ((*S*)-cyano-(3-phenoxyphenyl)methyl (*S*)-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodity, pistachios. The enforcement analytical method for determining residues is gas chromatography with nitrogen phosphorus detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism and chemical nature of residues of fenvalerate in plants is adequately understood. The fate of fenvalerate has been extensively studied using radioactive tracers in plant and animal metabolism/nature of the residue studies previously submitted to the Agency. These studies have demonstrated that the parent compound is the only residue of toxicological significance.

2. *Analytical method*. There is a practical analytical method utilizing electron-capture gas chromotography (MRID No. 43567101) available for enforcement with a limit of detection that allows monitoring food with residues at or above tolerance levels.

3. *Magnitude of residues*. Current tolerances are based on the sum of all isomers of fenvalerate. Fenvalerate is a racemic mixture of four isomers (about 25% each). This product was registered as Pydrin. However, since 1992, an *S,S*-isomer enriched formulation, Asana (esfenvalerate), has been the only fenvalerate formulation sold in the U.S. Since the *S,S*-isomer is the insecticidally active isomer, the use rate for Asana is 4 times lower than that for Pydrin. A petition is pending (PP–34F4329), to convert tolerances based on the use rates for Asana (still to be expressed as the sum of all isomers). Bridging studies have shown Asana residues to be 3–4 times lower than Pydrin residues.

A magnitude of residue study on pistachio was conducted at 5 sites in California where climate, soil type, and other conditions are typical of those found where Asana may be used on pistachio nuts for insect control. At each site, Asana was applied 2 times at 0.10 lb ai/A by foliar broadcast spray, 7 days apart, for a maximum rate of 0.20 lb ai/A/season. Treatments were also made at twice the maximum proposed label rate at each site. Pistachio samples were collected 0 and 1 day after the last application. The mean esfenvalerate residue found at the proposed label rate of 0.20 lb ai/A/season with a PHI of 1 day was 0.031 ppm +/- 0.012 ppm. These results support the proposed tolerance of 0.10 ppm.

Since there are no processed commodities of pistachios, processing studies were not conducted. In addition, pistachios are not an animal feed item and, therefore, secondary residues will not be an issue.

B. Toxicological Profile

The following studies have been submitted to EPA:

1. *Acute toxicity*. A rat acute oral study on esfenvalerate technical with an LD_{50} of 87.2 mg/kg (MRID 00144973). A rabbit acute dermal study on esfenvalerate with an LD_{50} of >2000 mg/kg (MRID 00156508). Acute inhalation on technical grade a.i. waived due to negligible vapor pressure. A primary eye irritation test using esfenvalerate in the rabbit which showed mild irritation (conjunctivitis) that cleared by day 7 (MRID 00156509). A primary dermal irritation test using esfenvalerate in the rabbit which showed minimal irritation that reversed within 72 hours after treatment (MRID 00156510). A dermal sensitization test on esfenvalerate in guinea pigs which showed no sensitization (MRID 41215203).

2. *Genotoxicity*. Esfenvalerate was not mutagenic in reverse mutation assays *in Salmonella* and *E. Coli* (MRID 413163010) or in HGPRT *in vitro* assay in Chinese hamster lung cells (MRID 41316302). Esfenvalerate did not induce chromosome aberrations in an *in vitro* assay in Chinese hamster ovary cells (MRID 41215204). Esfenvalerate did not induce micronuclei in bone marrow of mice given up to 150 mg/kg intraperitoneally (MRID 41316303). Esfenvalerate did not induce unscheduled DNA synthesis in HeLa cells (MRID 41316304).

3. *Reproductive and developmental toxicity*. A pilot developmental study in the rat with doses of 0, 1, 2, 3, 4, 5, and 20 mg/kg/day esfenvalerate (MRID 43211502). The maternal NOEL was 3 mg/kg/day based on maternal clinical signs of abnormal gait or mobility at 4 mg/kg/day and above. A developmental study in the rat with doses of 0, 2.5, 5, 10, and 20 mg/kg/day esfenvalerate by gavage (MRID 43211504). There was no maternal NOEL but a maternal NOEL was established in the pilot study. Maternal signs observed at 2.5 mg/kg/day were erratic jerking and extension of forelimbs, rapid side-to-side head movement and excessive grooming. There were no fetal or developmental effects in either study at 20 mg/kg/day, the highest dose tested. Therefore, the fetal/developmental NOEL was >20 mg/kg/day.

A pilot developmental study in the rabbit with doses of 0, 2, 3, 4, 4.5, 5, and 20 mg/kg/day esfenvalerate by gavage (MRID 43211501). The maternal NOEL was 2 mg/kg/day based on excessive grooming at 3 mg/kg/day and above. A developmental study in the rabbit with doses of 0, 3, 10, and 20 mg/kg/day esfenvalerate by gavage (MRID 43211503). There was no maternal NOEL but a maternal NOEL was established in the pilot study. There were no fetal or developmental effects in either study at the highest dose tested. Therefore, the fetal/developmental NOEL was >20 mg/kg/day.

A 2–generation feeding study with esfenvalerate in the rat at dietary levels of 0, 75, 100, or 300 ppm. The high

dietary concentration was lowered to 150 ppm for the second generation. Very mild body weight effects and sores at 75 ppm in both generations were considered secondary effects caused by scratching related to skin stimulation from dermal exposure. Therefore 75 ppm (4.2 mg/kg/day for first generation parental males, 5.6 mg/kg/day for first generation parental females, 6.0 mg/kg/day for second generation parental males, and 7.3 mg/kg/day for second generation parental females) was considered an NOAEL for both adult rats and their offspring. Effects were observed in adults and pups of both generations at 100 ppm and above. Pups were no more sensitive than adult animals (MRID 43489001).

4. *Subchronic toxicity*. A 90–day feeding study in rats conducted at 0, 75, 100, 125, and 300 ppm esfenvalerate with a NOEL of 125 ppm (6.3 mg/kg/day). This study provided intermediate dose levels to supplement a 90–day feeding study in rats conducted at 0, 50, 150, 300 and 500 ppm esfenvalerate with a NOEL of 50 ppm (2.5 mg/kg/day) based on jerky leg movements at 150 ppm (7.5 mg/kg/day) and above (MRID 00151030).

A 90–day feeding study in mice conducted at 0, 50, 150, and 500 ppm esfenvalerate and 2,000 ppm fenvalerate with a NOEL of 50 ppm esfenvalerate (10.5 mg/kg/day) based on lower glucose and triglycerides at 150 ppm. Neurologic symptoms were observed with 500 ppm esfenvalerate and 2,000 ppm fenvalerate (MRID 41359701).

Three month subchronic study in dogs is satisfied by 1–year oral study in dogs, in which the NOEL was 200 ppm (5 mg/kg/day) (MRID's 00265247, 403375601, and 40799501).

A 21–day dermal study in rabbits with fenvalerate conducted at 100, 300, and 1,000 mg/kg/day of fenvalerate with an NOEL of 1,000 mg/kg/day fenvalerate (MRID 42325101).

5. *Chronic toxicity*. A 1–year study in which dogs were fed 0, 25, 50, or 200 ppm esfenvalerate with no treatment related effects at any dietary level. The NOEL was 200 ppm (5 mg/kg/day). (MRID's 00265247, 40375601, 40799501). An effect level for dietary administration of esfenvalerate for dogs of 300 ppm had been established earlier in the 2–week pilot study used to select dose levels for the chronic dog study (MRID 40376501).

A 20–month study with fenvalerate in mice fed 0, 10, 30, 100, and 300 ppm fenvalerate. The NOEL was 30 ppm (6mg/kg/day) based on red blood cell effects and granulomatous changes at 100 ppm. Fenvalerate was not carcinogenic at any concentration (MRID 00093662).

An 18–month study with esfenvalerate in mice fed 0, 35, 150, and 350 ppm esfenvalerate. Mice fed the 350 ppm dose were sacrificed within the first 2 months of the study, after excessive morbidity and mortality due to self-trauma induced by pharmacological effects on dermal sensory nerves. Therefore, data collected from the 350 ppm group were not used in the evaluation of the oncogenic potential of esfenvalerate. The NOEL was 35 ppm (4.29 and 5.75 mg/kg/day for males and females, respectively) based on lower body weight and body weight gain at 150 ppm. Esfenvalerate was not carcinogenic at either the 35 ppm or 150 ppm concentrations (MRID 44260601).

A 2–year study with fenvalerate in rats fed 1, 5, 25, and 250 ppm. A 1,000 ppm group was added to establish an effect level. The NOEL was 250 ppm (12.5 mg/kg/day). At 1,000 ppm, hind limb weakness, lower body weight, and higher organ-to-body weight ratios were observed. Fenvalerate was not carcinogenic at any concentration (MRID's 00079877, 00082007).

6. *Animal metabolism*. After oral dosing, fenvalerate was eliminated from rats within 5 days after dosing. The metabolic pathway involved cleavage of the ester linkage followed by hydroxylation, oxidation, and conjugation of the acid and alcohol moieties.

7. *Metabolite toxicology*. The parent molecule is the only moiety of toxicological significance which needs regulation in plant and animal commodities.

8. *Other potential toxicology considerations - endocrine effects*. Estrogenic effects have not been observed in any studies conducted on fenvalerate or esfenvalerate. In subchronic or chronic studies there were no lesions in reproductive systems of males or females. In the recent reproduction study with esfenvalerate, full histopathological examination of the pituitary and the reproductive systems of males and females was conducted. There were no compound-related gross or histopathological effects. There were also no compound-related changes in any measures of reproductive performance including mating, fertility, or gestation indices or gestation length in either generation.

C. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing dietary exposure, chronic and acute dietary assessments have been conducted using all existing and pending tolerances for esfenvalerate. The toxocological endpoints used in both dietary assessments are derived from maternal NOEL's of 2.0 mg/kg/day from rat and rabbit teratology studies. There were no fetal effects.

2. *Food*. A chronic dietary exposure assessment using anticipated residues and assuming that 100% of all crops are treated, found the percentages of the Reference Dose (RfD) utilized by the two most sensitive sub-populations to be 44% (Non-Nursing Infants <1 yr.) and 48% (Children 1–6 yrs.). This assessment also included all food tolerances for incidental food handling establishments which were set at 0.05 ppm (the limit of quantitation) since there were no detectable residues. The results have been adjusted from the study previously submitted (MRID 43639301) to reflect the new Reference Dose (RfD) selected by EPA.

The Tier 3 acute dietary assessment has been rerun to incorporate current EPA thinking on processing studies and secondary residues that has arisen since the original study was submitted (MRID 44197701). The most sensitive sub-populations were determined to be: Non-Nursing Infants (< 1 yr.) with a Margin of Exposure (MOE) of 914 at the 95th percentile of exposure and an MOE of 254 at the 99th percentile of exposure; and Children (1–6 yrs.) with an MOE of 698 at the 95th percentile of exposure and 321 at the 99th percentile. The MOE's for the general population were 1,803 at the 95th percentile of exposure and 676 at the 99th percentile. This analysis used field trial residue data and market share data for the percent of crop treated. It also used Monte Carlo sampling and applied appropriate processing factors for apple juice and apple juice concentrate. Monte Carlo distribution was also used for meat and milk residues. Food handling establishment commodities were not included in the analysis because EPA methodology does not include them in Tier 3 exposure modeling.

3. *Drinking water*. Esfenvalerate is immobile in soil and, therefore, will not leach into groundwater. Additionally, due to the insolubility and lipophilic nature of esfenvalerate, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore not contributing to potential dietary exposure from drinking water. In addition, a screening evaluation of leaching potential of esfenvalerate has been conducted using DuPont's Tier 1 Ground Water Exposure Model (TIGEM, Version 12/30/96) which is based on results from EPA's Pesticide Root Zone Model (PRZM, Version 2.0). Based on this screening

assessment, the potential concentrations of esfenvalerate in shallow ground water are judged to be negligible.

4. *Non-dietary exposure*. Dietary exposure is the only significant route of chronic non-occupational exposure to esfenvalerate. However, esfenvalerate is registered for non-crop uses including spray treatments in and around commercial and residential areas, treatments for control of ectoparasites on pets, home care products including foggers, pressurized sprays, crack and crevice treatments, lawn and garden sprays, and pet and pet bedding sprays. For the non-agricultural products, the very low amounts of active ingredient they contain, combined with the low vapor pressure (1.5 x 10–9 mm Mercury at 25° C.) and low dermal penetration, would result in minimal inhalation and dermal exposure.

D. Cumulative Effects

The potential for cumulative effects of esfenvalerate and other pyrethroid insecticides that have a common mechanism of toxicity must also be considered. While risk assessment methodology has not been developed to estimate cumulative exposure to multiple pyrethroids, their similar insecticidal efficacy results in the substitution of one pyrethroid for another, rather than addition of pyrethroids. Because of the breadth of exposures included in the assumptions for esfenvalerate risk assessment, it is unlikely that there will be significant additive exposure to other pyrethroids.

These issues are extremely complex and require an extensive evaluation of a wealth of proprietary and published data across a broad range of pyrethroid insecticides in order to provide a scientifically sound interpretation upon which to base any regulatory judgments. The Pyrethroid Working Group is currently awaiting guidance from the Agency on cumulative effects. They anticipate having some preliminary evaluation data available for the Agency by August, 1997. For any interim decisions, the Agency should take into consideration the relatively benign toxicological profiles of pyrethroid insecticides and their long history of safe use.

E. Safety Determination

Both the chronic and acute toxicological endpoints are derived from maternal NOEL's of 2.0 mg/kg/day in developmental studies in rats and rabbits. There were no fetal effects. Therefore, the safety factor used for protection of adults is fully appropriate for the protection of infants and children; no additional safety factor is necessary.

1. *U.S. population*. A chronic dietary exposure assessment using anticipated residues and assuming that 100% of all crops are treated, found the percentage of the Reference Dose (RfD) utilized by the General Population to be 16%. There is generally no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, there is a reasonable certainty that no harm will result from aggregate exposure to esfenvalerate residues.

A Tier 3 acute dietary exposure assessment found the General Population to have MOE's of 1,803 at the 95th percentile of exposure and 676 at the 99th percentile of exposure. These values were generated using actual field trial residues and market share data for percentage of crop treated. These results depict an accurate exposure pattern at an exaggerated daily dietary exposure rate. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to esfenvalerate residues.

2. *Infants and children*. The chronic dietary assessment using the same assumptions described above, found the two most sensitive sub-populations to be non-nursing infants (<1 yr.) and children (1–6 yrs.) utilizing 44% and 48% of the RfD, respectively. In the Tier 3 acute dietary assessment that was rerun using the assumptions described above, non-nursing infants were found to have an MOE of 914 at the 95th percentile of exposure and an MOE of 254 at the 99th percentile. Children (1–6 yrs.) were determined to have an MOE of 698 at the 95th percentile and 321 at the 99th percentile. Therefore, there is a reasonable certainty that no harm will result from aggregate exposure to esfenvalerate residues.

F. International Tolerances

Codex maximum residue levels (MRL's) have been established for residues of fenvalerate on a number of crops that also have U.S. tolerances. Several of these MRL's are different than the proposed U.S. tolerances for esfenvalerate. Therefore, some harmonization of these maximum residue levels is still needed.

[FR Doc. 97–24691 Filed 9–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

(FRL–5893–1)

Draft Report of the National Performance Measures Strategy (''Measures Strategy'')

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the draft report of the National Performance Measures Strategy and request for comment.

SUMMARY: The Environmental Protection Agency (EPA), Office of Enforcement and Compliance Assurance (OECA) announces the availability of and requests for comment on, the Draft Report of the National Performance Measures Strategy (''Measures Strategy''). The Measures Strategy was initiated by OECA in January of 1997 ''to develop and implement an enhanced set of performance measures for EPA's enforcement and compliance assurance program.'' Since January, public meetings and roundtable sessions, consultations with experts, and reviews of studies and articles have occurred. Ideas were offered by representatives of regulated industries or companies, national and local environmental organizations, environmental justice advocates, state environmental protection agencies and associations, state Attorneys General offices, federal oversight and management agencies, federal regulatory and law enforcement agencies, environmental policy institutes, Congressional staff, academic experts, DOJ representatives, and EPA regional and headquarters managers and staff. EPA has reviewed the ideas and suggestions that have been offered from these sources, and from that review a proposed set of performance measures has been developed.

The report describes the need for enhanced measures, key ideas from interested parties, general findings about performance measurement, a proposed measurement framework, and a set of performance measures and possible implementation steps. Stakeholders are invited and encouraged to offer comment on the draft report through written submission. EPA will review these comments, revise the report and the proposed measures (if necessary), and distribute a final report by the end of October with the performance measures OECA intends to implement. In some cases, EPA may initiate further steps to study alternative measures that require more analysis or

have more complex implementation strategies.

DATES: The Measures Strategy announced today will be available on or about September 17, 1997. Written comments must be received by EPA (see address below for contact person) the close of business on October 17, 1997.

ADDRESSES: The draft report is available at the following Internet address: http://es.inel.gov/oeca/perfmeas. It is also available by contacting Mary Woods at Science Applications International Corporation; telephone 703–645–6958. Hard copies of the draft report are available at EPA's Information Resource Center, which is located at 401 M St. SW (Room #M2904); Washington, DC 20460; telephone (202) 260–5921. The Information Resource Center is open for business Monday-Friday between 8:00 am—5:00 pm, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Additional documents relating to the Measures Strategy may also be obtained by contacting James McDonald, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance (2201–A); 401 M St. SW; Washington, DC 20460; telephone (202) 564–4043; fax (202) 501–0701; e-mail: mcdonald.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The draft report released today will be the subject of a conference in Alexandria, VA on October 7, 1997. It will take place at the Holiday Inn Historic District Alexandria, 625 First Street, Alexandria, Virginia 22314; telephone 703–548-6300. The purpose of the conference is to review and discuss with stakeholders and regulatory partners the alternative performance measures contained in the draft report and which EPA is considering adopting for its enforcement and compliance assurance program. At that conference, panels of stakeholders and interested parties will be asked to provide comments and suggestions about the measures or other aspects of the report. Anyone interested in attending the conference and/or interested in being considered for participation on a panel should contact: James McDonald at the address listed above, or Mary Woods, Science Applications International Corporation, 2222 Gallows Road, Suite 300, Dunn Lorying, VA 22027; telephone 703–645-6958; fax 703–903–1373.

Dated: September 10, 1997.

Sylvia Lowrance,

Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–24548 Filed 9–16–97; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

American Heritage Rivers Initiative

AGENCY: Council on Environmental Quality.

ACTION: Description of American Heritage Rivers Initiative and information on how communities nominate their rivers.

CONTENTS: The major sections of this document include:

Summary
Deadline
Availability of Nomination Packets and Supplementary Information
Background
Summary of Comments Received from the Federal Register Notices of May 19 and June 20
Overall Program Design
Benefits of Designation
Benefits to Applicants who Submit Complete Nomination Packages
Improved Services Available to All Communities
Clarifications
Appendices

Summary

In the State of the Union Address on February 4, 1997, President Clinton announced an initiative supporting community-led efforts relating to rivers that spur economic revitalization, protect natural resources and the environment, and preserve historic and cultural heritage. President Clinton has since issued Executive Order 13061 directing agencies to establish and implement the initiative. This notice summarizes the initiative developed to implement the President's directive.

The federal government plays two critical roles in supporting river-related projects. First, it offers federal agency services to organizations and governments conducting community-based work. Second, it creates a national information and communications network to encourage communities to provide useful information to communities, including sharing success stories.

The American Heritage Rivers initiative is voluntary and locally driven; communities choose to participate and can terminate their participation at any time. In implementing the American Heritage Rivers initiative, federal departments and agencies shall act with due regard for the protections of private property provided by the Fifth Amendment to the United States Constitution.

The American Heritage Rivers initiative will create no new regulatory requirements or rules for property owners or state, tribal, or local governments. The American Heritage Rivers initiative will use existing federal resources more effectively to assist communities.

To enhance federal assistance to community-based projects, the federal government will solicit nominations from communities wishing to designate their rivers as American Heritage Rivers. The nomination process is described in this notice. The President will designate 10 American Heritage Rivers in early 1998. The communities surrounding designated rivers will receive a number of benefits, including special recognition; focused support from existing federal programs; a person (the ''River Navigator'') to serve as a liaison between the community and the federal government; improved delivery of assistance from agencies throughout the federal government; and a ''good neighbor'' policy. The federal government will work to integrate and streamline its approach to providing existing federal services in designated American Heritage River communities in partnership with local leadership. These partnerships will give the federal government an opportunity to study and improve how it provides assistance to communities across the nation.

Additionally, the federal government will provide a new information center on the World Wide Web for community-based projects in economic revitalization, natural resources and the environment, and historic and cultural preservation. These Web pages will include information about services that can assist community projects and provide opportunities for dialogue between communities. The federal government will also provide this information to people without access to the Internet.

The American Heritage Rivers initiative was developed by an interagency task force convened by the White House.

The President's Executive Order creates a new committee, called the American Heritage Rivers Interagency Committee (Committee) that will be responsible for the implementation of the American Heritage Rivers initiative. The Committee will be composed of the following members or their designees at the Assistant Secretary level or equivalent:

- The Secretary of Defense;
- The Attorney General;
- The Secretary of the Interior;
- The Secretary of Agriculture;
- The Secretary of Housing and Urban Development;
- The Secretary of Transportation;
- The Secretary of Energy;

• The Administrator of the Environmental Protection Agency;
• The Chair of the Advisory Council on Historic Preservation;
• The Chairperson of the National Endowment for the Arts;
• The Chairperson of the National Endowment for the Humanities.

The Executive Order shall apply to any agency on the Committee and such other agencies as designated by the President.

Each of these departments and agencies oversees programs and services, authorized by Congress, that can benefit citizens in riverfront communities. By engaging many of these departments and agencies in the creation of the American Heritage Rivers initiative, the Administration has tried to ensure that the initiative is founded on their various missions they are mandated to address, economic revitalization, natural resources and environmental protection, and historic and cultural preservation, and is directed at improving the coordination and delivery of related services.

The American Heritage Rivers initiative embodies the Administration's effort to reinvent government in accordance with the National Performance Review. The National Performance Review, directed by Vice President Gore, seeks to create a government that works better and costs less through focusing on customer service, developing partnerships, and delegating power to the front lines.

Availability of Nomination Packets and Supplementary Information

Deadline: Nominations must be received by 7:00 p.m., EST, on December 10, 1997. No nomination packets will be accepted after this time.

Availability of Nomination Packets: Nomination packets are available by request:

1. To call for nomination packets: 1–888–40RIVER and leave a message to request a nomination packet.
2. To request nomination packets by mail, write to: Karen Hobbs, Agency Representative, Executive Office of the President, Old Executive Office Building, Room 360, Washington, D.C. 20502.
3. To request nomination packets by Internet, access the American Heritage Rivers homepage at http://www.epa.gov/rivers.

Address

Nomination packets will be accepted in three ways:

1. To mail nomination packets: Executive Office of the President, Old Executive Office Building, Room 360, Washington, D.C. 20502.
2. To fax nomination packets: 202–456–6546.
3. To e-mail nomination packets see instructions on the American Heritage Rivers homepage at http://www.epa.gov/rivers.

All applicants will receive a postcard notification that their nomination packet has been received.

For Further Information: You can request additional information about American Heritage Rivers in the following ways:

1. To receive an information packet or ask a specific question: Call 1–888–40RIVER and leave a message with you name, address and daytime telephone number. Please be as specific as possible in your information request.
2. Federal field staff have been identified in each state to answer questions. You can obtain a list of the federal field staff by calling 1–888–40RIVER, or by accessing the American Heritage Rivers home page at: http//www.epa.gov/rivers. A list of the agency staff in Washington, D.C. is also available via these two methods.
3. The latest information is available on the American Heritage Rivers home page at: http//www.epa.gov/rivers.

Supplementary Information

This notice is available on the American Heritage Rivers home page at: http://www.epa.gov/rivers.

Background

Why This Initiative?

Rivers are an integral part of our Nation's history. They often define the distinctive character of communities, providing avenues for trade, opportunities for commerce, agriculture and forestry, routes for exploration and discovery, inspiration for ideas and culture, means of recreation, and habitat for wildlife.

Communities across America are working to revitalize their waterfronts and to enhance the historic, cultural, recreational, agricultural, public health, and environmental values of their rivers. At the same time, many people have called for better, smarter, and more coordinated ways to work with the federal government. President Clinton instructed the Cabinet to work with communities in the design of this initiative to support community-led efforts that spur economic revitalization, protect natural resources and the environment, and preserve our historic and cultural heritage.

The American Heritage Rivers initiative is consistent with the existing authorities articulated by Congress in the National Environmental Policy Act (NEPA) of 1969, as well as other authorities granted to agencies (the National Historic Preservation Act, the Housing and Community Development Act, the Clean Water Act and the Intermodal Surface Transportation Efficiency Act, to name a few). NEPA, for example, instructs federal agencies to seek to create and maintain conditions under which man and nature can exist in productive harmony, while preserving important historic, cultural, and natural aspects of our national heritage. The American Heritage Rivers initiative seeks to coordinate these existing authorities in a more efficient and complementary manner.

How Was the Initiative Developed?

President Clinton announced the initiative during the State of the Union Address on February 4, 1997. An interagency task force was formed to develop the initiative and was charged to report to the President within 90 days. The task force was chaired by the Council on Environmental Quality, and participating agencies included the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Justice, Interior, Transportation, the Environmental Protection Agency, the Advisory Council on Historic Preservation, the National Endowment for the Arts, the National Endowment for the Humanities, and the Smithsonian Institution.

On February 10, 1997, a home page on the World Wide Web was established to share ongoing information with the public and to encourage their input on all components of the initiative (http://www.eps.gov/rivers). The home page is updated on a regular basis. In addition, a hotline was established for citizen comments and questions (1–888–40RIVER).

During April and May, meetings were held across the country to solicit input on the criteria and selection process and to identify the particular federal resources sought most by communities. Staff members from the U.S. Congress authorizing and appropriating committees, along with a varied group of stakeholders, were invited to the two Washington, D.C. meetings. Meetings have also been held in Albuquerque, New Mexico; Boston, Massachusetts; Philadelphia, Pennsylvania; Atlanta, Georgia; Chicago, Illinois; San Francisco, California; Los Angeles, California; Seattle, Washington; Asheville, North Carolina; and Denver, Colorado. In addition, members of the interagency task force were invited to meetings in El Paso (organized by Congressman Silvestre Reyes) and

Laredo, Texas (convened by Mayor Saul N. Ramirez, Jr. and Webb County Judge Mercurio Martinez, Jr.)

Participants in these meetings offered many excellent suggestions on the overall initiative design and the needs of communities across the country engaged in river revitalization efforts. As a result, a draft notice of the initiative was published in the **Federal Register** on May 19. The **Federal Register** notice specifically asked for comments on the proposed overall design of the initiative, the qualifying and selection criteria, and the nomination and selection process. It also solicited advice regarding the specific types of federal assistance communities would find most helpful.

The comment period was originally scheduled to end June 9, 1997, but was extended until August 20, 1997 at the request of individuals and organizations and to encourage additional public comment.

Following the **Federal Register** notice, members of the interagency task force were invited to attend a number of meetings, including those in Minneapolis, Minnesota (organized by St. Paul Mayor Norm Coleman and attended by some 20 mayors along the Upper Mississippi River); the Fox River, Wisconsin (at the request of Congressman Jay Johnson); and the cities of Dubuque, Iowa; Jefferson City, Missouri; and Austin, Texas (at the invitation of representatives from the agriculture community); Denver, Colorado (at the invitation of the Upper Arkansas Watershed Council); West Virginia (at the request of the Hardy County Commissioners); and Frederick, Maryland (at the request of the Frederick County Board of Commissioners).

Summary of Comments Received From the Comment Period (May 19 to August 20, 1997)

The **Federal Register** notice comment period ran from May 19 to August 20, 1997, for a total of 90 days. The Administration is appreciative of all those who took the time to express their views and ideas on the initiative.

More than 1,700 comments were received. Many respondents wrote in favor of the initiative, citing increased coordination of federal services, the attention to environmental, economic, and cultural and historic values in the design of the initiative, the integrated method to river restoration and revitalization, and the community-driven approach. Many appreciated the fact that no new regulations would be imposed as a result of the initiative.

Many of the respondents wrote in opposition to the initiative. Many were opposed to federal involvement of any kind in restoring and revitalizing rivers and often expressed concern about property rights and the role of the United Nations along designated rivers.

Efforts were made to address all comments received. Special effort was made to clarify and refine the following areas:

- Overall initiative design;
- Need for the initiative;
- Qualifying and selection criteria;
- Role of the federal government;
- Congressional, state, and local roles;
- Benefits to non-designated rivers;
- Role of the River Navigator;
- Private property concerns;
- Nomination and selection process;
- Public involvement in the design of the initiative.

A summary of the comments received, and how each was addressed, appears in Appendix 2 of this notice.

Overall Program Design

The American Heritage Rivers initiative will be driven by the needs and desires of communities that wish to participate. The federal government will focus the delivery of resources to support community-led efforts that spur economic revitalization, protect natural resources and the environment, and preserve our historic and cultural heritage. The initiative will also pinpoint and recognize outstanding models of community-based development, conservation, and other efforts, and will, through an information clearinghouse, share the lessons learned in these communities with all who are interested.

How Do Communities Nominate a River and Who May Apply?

The nomination process begins in the local community. People representing all the different interests who live and work in the area should come together to develop the nomination. After meeting to share information, identify common goals for their river, and set strategies to achieve those goals, they should ask one of their members to submit a nomination on their behalf.

The nomination package must include a completed American Heritage Rivers Cover Sheet (printed at the end of this notice in Appendix 1) and responses to items 1–4, listed below. Responses to items 3 and 4 constitute the primary basis for evaluating nominations. Items 1 and 2 will be used to put responses to items 3 and 4 in context, but will not be used to assess the merits of the nomination. The President will designate rivers that receive the highest evaluation from items 3 and 4 and have substantively answered items 1 and 2. The President will also seek rivers representing the geographical, historical, and resource diversity of the nation (for a complete discussion of additional factors used in the selection process, please see ''How Will Rivers Be Selected for Designation?'' below).

These four items reflect changes made to the initiative as a result of public comment. In the May 19 and June 20 **Federal Register** notices, five criteria were listed: (1) Broad community support; (2) notable resource qualities; (3) local and regional partnership agreements; (4) strategies that lead to action; and (5) measurable results. In this final notice, two criteria from the earlier notices, (1) broad community support and (2) local and regional partnership agreements, have been combined into one item: ''illustrate support for the nomination and plan of action.'' The second criterion from earlier notices, notable resource qualities, is no longer a criterion because it is primarily descriptive. The two criteria from the earlier notices, (3) strategies that lead to action and (4) measurable results, have been combined into one item: ''describe the community's plan of action,'' which includes measures of performance as one of the components of the plan of action.

The four items to be addressed in the nomination packet are:

1. Describe the Proposed American Heritage River Area

Define the proposed area and describe its natural qualities and current uses; for example, economic activities, population patterns, and topography. The size may vary from a short stretch to the whole length of the river. It can cover land immediately adjacent to the river, such as the waterfront and stream side areas, or span the entire watershed. It may cross jurisdictional boundaries. The scope of the area, however, should be sufficient to achieve the community's goals.

2. Describe the Notable Resource Qualities in the Area

Explain how the natural, economic, agricultural, scenic, historic, cultural, and/or recreational resources are distinctive or unique.

3. Describe the Community's Plan of Action

Demonstrate that the community has in hand, or is developing, a clearly defined plan of action to achieve its vision for the river area. Applicants are expected to address all three American

Heritage Rivers objectives—economic revitalization, natural resource and environmental protection, and historic and cultural preservation—either through planned actions or past accomplishments. Any actions planned on the designated river area should not adversely impact neighboring communities. The community may describe both long-term plans and short-term actions. It should also describe how private property rights will be respected.

At a minimum, the plan of action should address:

- Community vision.
- Products and projects, including project maintenance.
- Resources, both committed and anticipated, including means of generating additional support from both private and public sources.
- Expected federal role.
- Schedule or timeline.
- Citizen involvement.
- Public education.
- Logistical support, operating procedures and policies.
- Prior accomplishments, if relevant, and relationship to existing plans and projects in the area.
- Challenges to community action.
- Measures of performance.

4. Illustrate Who Supports the Nomination and Plan of Action

Demonstrate that a range of citizens and organizations support the nomination and plan of action. Provide evidence that members of the community have had an opportunity to comment on and discuss the nomination and plan of action.

- Supporters should reflect the diversity of the community. As appropriate, they should include farmers, ranchers, landowners, businesses and industries, educational and arts organizations, youth groups, community leaders, developers and community development organizations, historical societies, environmental groups, and other nonprofit organizations, elected officials, and state, tribal and local governments. Supporters should include minority and low income-individuals and groups. Those who rely on the resources but live outside the area should also be included in discussions about the plan of action, but may not submit a nomination.
- Describe the nature and scope of the supporters' role. Demonstrate that they come from all affected jurisdictions.
- As appropriate, describe how past and continuing partnerships or agreements support the nomination proposal. If relevant, describe partnerships or agreements that were forged and commitments that were made specifically to support the American Heritage Rivers nomination proposal.
- Letters of endorsement and support are highly recommended, especially those from elected officials and appropriate state, tribal and local governments. Letters from federal agencies will not be accepted.

Nominations must be limited to 15 pages of 10-point text or larger, using one-inch margins. Letters of endorsement should include names, addresses, and phone numbers of the supporters and will not count toward the 15-page limit. Letters of endorsement should also indicate the level of support to be given to the American Heritage River plan of action by the individual or organization writing the letter. Letters of endorsement must be included in the nomination packet; letters of endorsement sent separately will not be considered. Due to constraints on the review and selection process, additional materials, such as videos, photographs, and plans, will not be accepted; however, photographs may be embedded in the text if the total length does not exceed 15 pages.

As part of a nomination packet, communities must identify projects they wish to undertake. Communities seeking designation do not have to agree on every aspect of the river's use; they must only agree to support the plan of action for the river they identify in their nomination package. Of course, any projects identified in the nomination packet must still undergo applicable state and local review processes.

The most successful applicants will show evidence of broad community support and a clearly defined plan of action. A single nomination for the same river, river stretch or river confluence will indicate, in part, this broad community support. One nomination per river, river stretch or river confluence is recommended. Multiple nominations will be ranked and scored separately.

The scope of the nomination does not have to include contiguous segments of the river. While it is desirable to apply for designation of contiguous river segments, nominations for two or more noncontiguous segments will be accepted and considered. It is conceivable that two communities will choose to nominate noncontiguous segments of the same river. Although this is acceptable, actions proposed should not adversely affect neighboring communities or have a negative impact on such things as cultural or natural resources, the environment, river access, water quantity or quality, agriculture, navigation, or flood plain management.

After a designation is made, some communities may wish to add stretches of river as part of their designated river. The same process used by the community to seek designation should be used to augment the designated river area. The community should notify the Committee (see ''Coordinated Delivery of Federal Services'' below) of this augmentation. The Committee will then make such recommendations to the President on behalf of the community.

Foreign governments and their international organizations are ineligible to nominate rivers. Foreign governments and their international organizations will have no authority granted to them as a result of an American Heritage Rivers designation.

Nominations are welcomed from community-led efforts that are well underway, as well as from new efforts that are not yet being implemented.

How Will Rivers Be Selected for Designation?

A panel of experts on river issues will review nominations and recommend rivers to the President for designation. The panel will be composed of a number of interests, such as representatives of natural, cultural and historic resources concerns; scenic, environmental and recreation interests; tourism, transportation, and economic development interests; labor; and industries such as agriculture, hydropower, manufacturing, mining, forest management and others.

The Chair of the Council on Environmental Quality shall develop procedures for selecting the members of the panel and directing its activities.

In preparation for review by the panel, agency staff will score individual nominations based on community responses to items 1–4 explained in detail above and summarized as follows:

1. Description of the proposed American Heritage River area.
2. Description of the notable resource qualities in the area.
3. Description of the community's plan of action.
4. Illustration of who supports the nomination and plan of action.

Responses to items 3 and 4 constitute the primary basis for evaluating nominations and will be given equal weight in the scoring process, while items 1 and 2 will be used to put responses to items 3 and 4 in context.

From among those nominations that are considered to be qualified, the reviewing panel will also seek to recommend rivers for designation that

represent a range and variety of kinds of rivers, including those that:

- As a group and individually, represent the natural, historic, cultural, social, economic and agricultural diversity of American rivers.
- Showcase a variety of stream sizes and an assortment of urban, rural, and mixed settings from around the country. The Committee may recommend both relatively pristine and degraded rivers.
- Highlight a variety of innovative programs in such areas as historic preservation, wildlife management, fisheries restoration, recreation, community revitalization, agricultural practices, public health and drinking water source protection, and flood plain and watershed management.
- Include community partnerships in an early stage of development, as well as those that are more well established.
- Stand to benefit from requested federal assistance.

Number of Designations

The President will designate ten rivers in early 1998. Additional designation in subsequent years will be guided by experience gained from the designated rivers and the level of community support for the initiative.

Terms of Designation

American Heritage Rivers designation is intended to enhance the partnership between a community along a designated river and the federal government. Although the term of focused, active assistance will be limited to five years, it may be impossible to achieve measurable results from a community's plan of action in that time. Federal agencies may continue to provide appropriate services as part of their ongoing activities after this time.

The community, with the support of the federal government, will work together to implement the plan of action. Designation will generally be considered permanent or until and unless termination of designation is sought.

The Committee will develop a process by which any community that nominates and has its river designated may have this designation terminated at its request.

Upon a determination by the Chair of the Council on Environmental Quality that a community has failed to implement its plan, the Chair may recommend to the President that a designation be revoked. The Chair shall notify the community at least 30 days prior to making such a recommendation to the President. Based on that recommendation, the President may revoke the designation.

The federal government may also find it necessary to terminate designation because a community has failed to pursue its plan of action. The procedures for such an action will accompany the designation of American Heritage Rivers. Regardless of whether the community or the federal government has requested termination of designation, the other party shall be entitled to know the rational for the other party's action.

Benefits of Designation

Presidential Recognition

Designated American Heritage Rivers will be selected by the President of the United States as rivers which deserve special recognition.

Coordinated Delivery of Federal Services

Programs exist in numerous federal agencies to support economic revitalization, natural resources and environmental protection, and historic and cultural preservation, especially in the agencies that have participated in the development of American Heritage Rivers.

All assistance from the federal government under the auspices of the American Heritage Rivers initiative will come at the request of the community. However, once a river is designated, a preliminary team of federal agency representatives will be available to help the community determine the role for federal assistance. A River Navigator, formerly referred to as a ''caseworker'' in public meetings and earlier documents (see ''River Navigator'' below, for a full description of this position) will be made available for each community. The American Heritage Rivers Interagency Committee (see ''Summary'' above) may assist in overcoming obstacles that arise as many federal services are provided.

Examples of the federal assistance a community might receive include: information and maps to help communities identify and evaluate historic, environmental and economic resources; capacity building, planning and community outreach assistance to ensure a well-defined action strategy and a broad base of support; training in the use of soil and water quality information as a basis for decision-making and against which to measure progress; training and assistance with environmental monitoring to help communities develop a report card on river conditions and trends; research assistance to identify events and trends in local history; interpretive assistance to develop a framework for communicating the importance of the community's river heritage; technical and financial assistance to implement restoration and pollution prevention activities; and economic modeling to help communities assess benefits and costs of proposed projects.

Within 90 days of designation, the community and the federal agency team should agree on a framework document to identify their proposed roles. The community and the federal team should agree upon one sponsoring federal agency to lead the coordination of federal resources. Methods for simplifying and expediting individual program services will be investigated, and, recommendations made, as appropriate, for improving the scope and substance of federal tools.

The federal teams will function in partnership with each community, state, local, tribal governments, non-governmental organizations, and others, as appropriate.

The Committee will oversee the federal responsibilities under the initiative. Based on the lessons learned from each designated river, the Committee will look for opportunities to reduce bureaucracy, streamline services, and overcome obstacles.

Finally, federal employees providing assistance to designated American Heritage Rivers will participate in an evaluation of the successes and problems associated with the initiative and make recommendations for improving delivery and accessibility of services and programs.

River Navigator

The community surrounding each designated river will have the opportunity to help select a River Navigator who will assist the community in implementing its plan of action. The River Navigator will serve as a liaison between the community and the appropriate federal programs; assist the community, if requested, in engaging the assistance of state, tribal, and local governments and private sector interest; provide information services; offer technical advice; and perform other duties as the community may request, consistent with the goals of the American Heritage Rivers initiative.

The community, rather than the River Navigator, will be responsible for implementation of the community's plans. The River Navigator will have no authority to adjudicate and may not engage in the following: lobbying; leadership of the community partnership or any of its endeavors, or sponsoring organizations; or serve as an

officer or voting member of the partnership or any sponsoring organization.

In order to ensure clear communication, the federal government will request that the community identify a single point of contact as its representative to work closely with the River Navigator. Of course, all members of the community may speak with the River Navigator and other appropriate federal officials assisting American Heritage Rivers.

The framework document, drafted by the federal agencies and the community within 90 days of designation, should include a position description for the River Navigator tailored to the unique needs of the community. The federal agencies and the community should develop performance measures for the River Navigator once she or he is identified. These performance measures must reflect the role of the River Navigator as defined in this **Federal Register** notice.

The River Navigator will be selected by the sponsoring federal agency with input from the community (see ''Coordinated Delivery of Federal Services'' above), and will be filled for a period no longer than five years beginning no later than 120 days after the date of designation. Because each community will have difference needs, the sponsoring federal agency will identify several candidates for the River Navigator position from existing staff and provide an opportunity for the community to interview these candidates and provide input to the selection process. The River Navigator will have maximum latitude to work with the community, while also having direct access to principal staff of the sponsoring agency, including the agency representative on the Council (see ''Coordinated Delivery of Federal Services'' above) as well as other agencies.

The River Navigator position will be fully federally funded, unless the community volunteers non-federal funds to support the position. There is no requirement that a community accept a federal employee as their River Navigator. If the community chooses not to take advantage of the benefit of having a River Navigator, the federal government will provide a point of contact on the Council to call upon as needed.

''Good Neighbor'' Policy

Regarding those sites designated as American Heritage Rivers, the federal government intends to act as a ''good neighbor'' in planning and making decisions that affect economic development, natural resources and environmental protection, and historic and cultural preservation. The assistance provided by federal agencies is intended to enhance and complement local community goals. In coordinating with state, tribal and local governments, federal agencies will strive to minimize inconsistency, and to reduce or eliminate conflicting policies and programs operating on and around designated rivers. Through early coordination and public involvement, federal agencies will be in a better position to accommodate the local community plans for designated rivers when planning proposed federal actions. The Good Neighbor policy will add no new layers of review or approval to federal actions—it will simply facilitate those coordination policies and review processes already in place, and encourage the consolidation and streamlining of existing review processes, where possible.

Federal agencies will be encouraged to work in partnership with communities. Local federal facilities will be encouraged to provide public access, physical space, technical assistance, and other support for which they have authority and resources.

Private Sector Opportunities

The Administration will look for opportunities to help communities access resources from the private sector to help accomplish the purposes of this initiative.

Benefits to Applicants Who Submit Complete Nomination Packages

Communities that invest their time to complete the American Heritage Rivers nomination package have already taken important steps to revitalize their communities and improve their rivers. In recognition of these efforts, those who submit complete nomination packages will receive:

- An invitation to a national or regional symposium on partnering with federal, state, tribal and local governments to share information and learn about the tools and resources available from a variety of sources, including community organizations. These symposia will also provide community members an opportunity to give important feedback to federal program managers.
- Relevant site-specific data and computer software, including environmental information, geological maps, community planning software and economic modeling tools. This information will be tailored to meet the community's needs as identified in their nomination.

Improved Services Available to All Communities

All communities will benefit from improved federal services. American Heritage Rivers Services consolidates existing information from many organizations in one, easy-to-use World Wide Web site. Those who do not have Internet access can call 1–888–40RIVER to request information.

Services, tools and products related to these three primary objectives of American Heritage Rivers are referenced in the web site. Users may choose from categories such as:

- Information Centers, Publications, Maps and Databases.
- Calendars, Discussion Groups, and Contacts.
- Hands On Assistance and Talent Banks.
- Laws and Regulations.
- Financial Assistance.
- Community Outreach Tools, Curricula, and Professional Training.
- Data Collection and Evaluation Techniques.
- Planning and Management Tools.
- Research and Development.

Each entry describes the services and provides contacts for further information, including Internet links (where possible).

American Heritage Rivers Services also provides information organized geographically. Using familiar prompts, such as a river or city name, users can locate information on flood events, population change, road networks, the condition of the water resources, and the partnerships already at work in their area. They can construct customized maps and download them, use economic and environmental assessment models, find information on relevant educational programs, link their own information, or enter a dialogue with others.

Clarifications

What is the Role of the Federal Agencies?

The role of the federal agencies in this initiative is to listen to community concerns and needs; to work with communities engaged in conservation and development activities; to overcome obstacles in the delivery of federal services to identified local priorities; and to play a coordination role in helping communities and government agencies learn from each other and compile the best practices, standards, and models for emulation throughout the country.

The greater coordination of federal agencies involved in the American Heritage Rivers initiative may result in

more efficient review of federal actions taken in conjunction with implementation of the community's plan of action.

While federal agencies will not endorse individual nominations for designation as an American Heritage River, they will be able to answer questions about the nomination process and continue to work with local government and nongovernmental organizations, some of which may be pursuing designation.

All activities proposed under the American Heritage Rivers initiative must comply with and be consistent with any applicable federal, state, tribal and local laws, be voluntary, and be helpful to local governments. There is nothing in the American Heritage Rivers initiative that will alter any obligation of the federal government to comply with NEPA or any other statutory or regulatory requirements. Nothing herein shall create or alter any rights, duties, obligations, causes of action or defenses, implied or otherwise, of any person or entity. American Heritage Rivers is a commitment by the federal government to try to provide those programs and resources, identified by the community and paid for by taxpayers, in the most efficient and effective manner possible.

Protection for Private Property and Other Rights

The Administration is committed to ensuring that private property rights, water rights, and other rights are fully respected and protected under the American Heritage Rivers initiative.

- The American Heritage Rivers initiative will work in coordination with laws and regulations that seek to reduce pollution, improve water quality, protect drinking water, manage floodplains, promote economic development, facilitate interstate commerce, promote agriculture, protect wetlands and endangered species, preserve important historic and archaeological sites, and address other concerns.
- The American Heritage Rivers initiative will not conflict with matters of state and local government jurisdiction, such as water rights, land use planning and water quality standards, nor will it change interstate water compacts, Indian tribal treaty rights, flood damage reduction, or other existing rights. By achieving greater coordination between programs and local needs, American Heritage Rivers will work to build mutual understanding and better solutions to existing and future problems. It will provide a forum in which federal officials, community organizations, and other stakeholders can examine how the range of regulations are implemented locally.
- Employees of the federal government, including the River Navigator, may not as a result of the American Heritage Rivers initiative infringe on the existing authority of local governments to plan or control, land use, or provide or transfer authority over such land use; nor may the initiative affect any existing limitations on or create any new authorities for the participation of federal employees, including River Navigators, in local zoning or land management decisions involving private property.
- The initiative will not supersede, abrogate, or otherwise impair the authority of each state to allocate quantities of water within its jurisdiction; and any proposal relating to water rights in a community's plan must comport with all applicable laws and interstate compacts. Nothing in this initiative is meant to preclude any holder of a state water right from exercising that right in a manner consistent with state law.
- In implementing the American Heritage Rivers initiative, federal departments and agencies shall act with due regard for the protections of private property provided by the Fifth Amendment to the United States Constitution.

What is the Role of State, Tribal, and Local Governments?

State, tribal, and local governments play critical roles in the American Heritage Rivers initiative. The initiative is designed to complement the work already taking place at the state, tribal and local levels. Local agencies in particular bring a unique and valuable perspective. The American Heritage Rivers initiative can serve as a catalyst to bring these stakeholders together, including neighboring localities and states that share rivers.

Through partnerships, the American Heritage Rivers initiative will bring federal, state, tribal and local resources together to improve the ten designated rivers and provide more efficient services to communities. The greater efficiency achieved through greater coordination of federal services will translate into easier access to federal services by state, tribal, and local governments.

Projects identified through the nomination process for American Heritage Rivers will undergo appropriate state and local review processes. The identification of projects in the nomination process should not circumvent local, regional, or state planning forums, especially those involving public review process. Indeed, as appropriate, such processes should complement public outreach efforts and can serve as public forums on proposed projects to be undertaken as part of designation as an American Heritage River. Designation should not impact existing timetables for projects already identified by the community. In many cases, designation could accelerate completion of common objectives.

Many of the federal agencies already have close working relationships with state, tribal, and local governments. These relationships will continue. The River Navigator may request that state, tribal, and local governments participate in the teams that will be assembled to work with each community to implement its plan of action.

Evidence of state, tribal, and local government support will be a key element in selecting American Heritage Rivers. It is likely that state, tribal, and local governments will submit nominations on behalf of communities who wish to participate.

The American Heritage Rivers initiative schedule:

1997

February–ongoing: Outreach to Interested Organizations and Individuals
May–August: **Federal Register** notice of Draft Program Design, with Comment Period
September: Cabinet Recommends Initiative Design to President
Mid-September: **Federal Register** notice of Final Program, Open Nomination Period
December 10: Nominations Due

1998

Early 1998: Designated Rivers Announced

Dated: September 12, 1997.

Kathleen A. McGinty,

Chair, Council on Environmental Quality.

APPENDICES

Appendix 1—American Heritage Rivers Cover Sheet for Nomination Packet

[OMB Control No. 0596–0143; Expiration Date: 3/31/98]

To be considered, nomination packets must be received by 7:00 p.m. Eastern Standard Time on December 10, 1997.

Mail your completed nomination packet to: American Heritage Rivers, Executive Office of the President, Old Executive Office Building, Room 360, Washington, D.C. 20502.

Or fax to: (202) 456–6546.

Or to e-mail: See instructions on American Heritage Rivers web site at http://www.epa.gov/rivers.

1. Name of proposed American Heritage River: _____

2. Nominating Organization(s): _____

3. Primary Point of Contact: _____

Title: _____
Organization: _____
Street Address: _____
City: _____
State: _____
ZIP: _____
Phone: Work _____
Home: _____
FAX _____

4. Certification and Signature of Primary Point of Contact:

To the best of my knowledge, the information contained in this Nomination Packet is accurate.

Name of Contact (print): _____
Title: _____
Signature and Date: _____

Nominations must be limited to 15 pages of 10-point text or larger, using one-inch margins. Letters of endorsement should include names, addresses, and phone numbers of the supporters and will not count toward the 15-page limit. Letters of endorsement should also indicate the level of support to be given to the American Heritage River plan of action by the individual or organization writing the letter. Letters of endorsement must be included in the nomination packet; letters of endorsement sent separately will not be considered. Due to constraints on the review and selection process, additional materials, such as videos, photographs, and plans, will not be accepted; however, photographs may be embedded in the text if the total length does not exceed 15 pages.

Facsimile (FAX) of nomination packets will be accepted. Fax to (202) 456–6546.

Nomination packets may be submitted electronically. See instructions on the American Heritage Rivers web site at http://www.epa.gov/rivers.

If faxing or sending electronically, please also complete and mail the cover sheet along with any letters of endorsement.

The nomination packet must be received by 7:00 p.m. Eastern Standard Time on December 10, 1997.

Information supplied on the nomination cover sheet will be used to determine eligibility for American Heritage River designation and is required to receive program benefits.

Estimated burden for preparing this application is 32 hours per response. If you have comments on this burden estimate, contact American Heritage Rivers c/o Council on Environmental Quality, Executive Office of the President, Old Executive Office Building, Room 360, Washington, DC 20502. Information supplied on the nomination cover sheet is public and may not be held confidential. An agency may not contact or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Appendix 2—Summary of Comments Received and How They Were Used

A content analysis of the comments was performed to provide an accurate picture of expressed public opinion on the initiative. The comments were incorporated into the final design of the initiative. A 100 percent analysis was carried out on the 1,727 letters, e-mail messages, phone messages, faxes, petitions and form letters received through August 20. Each letter was read and coded by a team trained in content analysis procedures. Each substantive comment was divided into subject categories and captured verbatim in the database.

Individuals made up the largest response (58.5 percent). Others who commented identified themselves as farmers and ranchers (4.2 percent); environmental organizations (3.9 percent), and elected officials (12.1 percent, including Members of Congress).

Respondents commented on a wide range of subjects. In particular they focused on the following (not in rank order):

- Overall initiative design;
- Need for the initiative;
- Qualifying and selection criteria;
- Role of the federal government;
- Congressional, state, and local roles;
- Benefits to non-designated rivers;
- Role of the River Navigator;
- Private property concerns;
- Nomination and selection process
- Public involvement in the design of the initiative.

Overall Initiative Design

Many comments were favorable, citing increased federal coordination, the attention to a range of values in the design of the initiative, the integrated approach to river restoration and revitalization, and the community-driven approach. Many comments were appreciative of the non-regulatory design of the initiative.

Several comments addressed initiative funding. Some requested that the initiative be funded adequately to ensure success; others stated that the initiative would be too costly. Many respondents wanted to know more about the cost of the initiative and many were concerned that support for existing programs would be withdrawn in order to pay for the initiative. Still others stated that ''no new money'' was a good catalyst and freed communities to develop more creative solutions.

In response, this **Federal Register** notice clarifies that the American Heritage Rivers initiative is about improved government responsiveness, efficiency, and effectiveness. The programs that are part of the initiative are already authorized by Congress; the initiative will ensure these programs are better coordinated and targeted. With a full understanding of the community's needs and coordinated assistance, the appropriate federal program will more quickly be available to a given community (reducing costly delays and wasteful duplication of efforts).

Need for the Initiative

Some respondents expressed concern that the initiative would create another bureaucratic layer and merely duplicate existing federal, state, and local programs. Among those who stated that the initiative was useful and needed, the principal reasons given were river revitalization and improvement of federal programs by focusing on community-based solutions. This **Federal Register** notice clarifies that the initiative is needed in order to support locally-led efforts aimed at economic development, natural resources and environmental protection, and historic and cultural preservation in an efficient and effective manner. See additional discussion under ''Why this initiative?''

Qualifying and Selection Criteria

On the subject of qualifying criteria, a number of respondents were concerned that only certain types of rivers would be designated—those with prior successes, those rivers in relatively pristine condition, or only rivers in the East. A number of respondents stated that highly degraded rivers and efforts at an early stage of development were most deserving of designation. This **Federal Register** notice clarifies that a diversity of rivers will be selected. See additional discussion under ''How will rivers be selected for designation?''

Role of the Federal Government

Respondents raised many questions on what new roles, in any, federal agencies would play in their communities. The role of federal agencies in this initiative is to listen to community concerns and needs; work with communities engaged in conservation and development activities; overcome obstacles in the delivery of federal services and responses to identified local priorities; and play a coordination role in helping communities and government agencies learn from each other and compile the best practices, standards, and models for emulation throughout the country. See additional discussion under ''What is the role of the federal agencies?''

Congressional, State, and Local Roles

Respondents raised questions about the involvement of Congress and the states in both the design of the initiative and its implementation. Because Congress authorizes and appropriates funds for the agencies involved in American Heritage Rivers, efforts have been made to inform Members of Congress of the initiative's progress from the beginning. Representatives from the participating agencies invited staff from the authorizations and appropriations committees to two meetings held in Washington, D.C. In addition, the agencies held briefings for House and Senate staff and met or talked with over 100 Congressional offices.

The states have provided input into the initiative, through the National Governors Association and through individual agencies. Individual elected officials, as well as the National Conference of Mayors, commented as well. This **Federal Register** notice clarifies that state and local support will be critical to successful designation and that the initiative will not conflict with matters of state, tribal and local government jurisdiction.

Many respondents from all parts of the country called for more involvement by the states in implementing such an initiative, so that the states' priorities are not overlooked. This **Federal Register** notice clarifies that state, tribal, and local governments all play critical roles in implementing this initiative.

See additional discussion on the role of states in implementing the initiative under ''What is the role of the states and local

government?'' and ''What is the Role of the Federal Agencies?''

Benefits to Non-Designated Rivers

Respondents were curious about what benefits will go to non-designated rivers. The initiative provides benefits to all people working to revitalize their rivers. See additional discussion under ''Benefits to Applicants Who Submit Complete Nomination Packets'' and ''Improved Services Available to All Communities.''

Role of the River Navigator

Some respondents stated that the River Navigator would be of great help to the community; others focused on the possibility that this individual would hold too much power, would add a layer of bureaucracy, and/or would not represent the community's wishes. These issues have been clarified in this **Federal Register** notice. The River Navigator will not be given any new authority over local zoning or local land use decisions. When American Heritage Rivers are selected, members of the relevant communities will have the opportunity to help shape the specific duties of their River Navigator and have a role in choosing one Navigator from several candidates. Although the Administration believes that River Navigators will be extremely helpful, no community will be required to accept a River Navigator. See additional discussion under ''Benefits of Designation,'' subsection ''River Navigator.''

Private Property Concerns

Many wrote in with concerns about private property rights. While existing laws and programs will continue to apply, the American Heritage Rivers initiative, in and of itself, will have no effect on private property rights. However, several new directives concerning protection of property rights were included in the **Federal Register** notice. See additional discussion under ''What is the Role of the Federal Agencies?'' and ''Protection for Private Property and Other Rights.''

Nomination and Selection Process

Many respondents questioned how rivers would be nominated. The term ''river community'' was confusing to many people. They sought clarification on which groups composed a ''river community'' and the extent of community support needed for a nomination. Of particular concern was that a group of people who lived outside the ''river community'' could successfully nominate a river without the support of the people who relied on the river for their livelihood or recreation.

Only those people who live or work in the proposed area may nominate their river. However, people representing all interests should be involved in the process. See discussion under ''Summary of American Heritage Rivers Initiative'' and ''How do communities nominate a river and who may apply?''

Respondents showed considerable interest in particular rivers being designated. As of September 12, 1997, no nominations have been solicited or accepted and no rivers have been selected. Nomination packets are now available. The nomination period will be open from September 11 to December 10. The President will announce the selected rivers in early 1998. See more detailed discussion under ''How do communities nominate a river and who may apply?'' and ''How will rivers be selected?''

Public Involvement in the Design of the Initiative

Respondents sought information on when and how the public has played a role in designing the initiative. Extensive public involvement has been a cornerstone of the initiative from the beginning. See discussion under ''How the initiative was developed.''

[FR Doc. 97–24774 Filed 9–16–97; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2224]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

September 12, 1997.

Petitions for reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C., or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petitions must be filed October 2, 1997. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Changes to Board of Directors of the National Exchange Carrier Association, Inc. (CC Docket No. 97–21). Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 5.

Subject: Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 6.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–24723 Filed 9–16–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. One Valley Bancorp, Inc., Charleston, West Virginia; to acquire 100 percent of the voting shares of One Valley Bank-Central Virginia, N.A., Lynchburg, Virginia. The proposed successor by charter conversion to One Valley Bank-Central Virginia, Lynchburg, Virginia, a subsidiary of One Valley Bancorp, Inc.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First United Bancshares, Inc., El Dorado, Arkansas; to acquire 100 percent of the voting shares of City Bank & Trust of Shreveport, Shreveport, Louisiana.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. FirstBank Holding Company of Colorado, ESOP, Lakewood, Colorado; to acquire an additional .86 percent for a total of 26.36 percent, of the voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado, and thereby indirectly acquire FirstBank of

Arvada, N.A., Arvada, Colorado; FirstBank of Aurora, N.A., Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of Boulder, N.A., Boulder, Colorado; FirstBank of Breckenridge, N.A., Breckenridge, Colorado; FirstBank of Douglas County, N.A., Castle Rock, Colorado; FirstBank of Colorado Springs, Colorado Springs, Colorado; FirstBank of Cherry Creek, N.A., Denver, Colorado; FirstBank of Denver, N.A., Denver, Colorado; FirstBank of Longmont, Longmont, Colorado; FirstBank of Northern Colorado, Fort Collins, Colorado; FirstBank of Greeley, Greeley, Colorado; FirstBank of Tech Center, N.A., Englewood, Colorado; FirstBank of Colorado, N.A., Lakewood, Colorado; FirstBank of South Jeffco, Littleton, Colorado; FirstBank of Lakewood, N.A.,Lakewood, Colorado; FirstBank of Littleton, N.A., Littleton, Colorado; FirstBank of Arapahoe County, N.A., Littleton, Colorado; FirstBank of Silverthorne, N.A., Silverthorne, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank North, N.A., Westminster, Colorado; FirstBank of Wheat Ridge, N.A., Wheat Ridge, Colorado; FirstBank of Evergreen, Evergreen, Colorado; and FirstBank, N.A., Palm Desert, California.

Board of Governors of the Federal Reserve System, September 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–24701 Filed 9–16–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the Agency for Health Care Policy and Research (AHCPR) announces the following technical review committee to meet during the month of September 1997:

Name: Technical Review Committee for the AHCPR User Liaison Program Mail Key Support Services Contract.

Date and Time: September 24, 1997, 10 a.m.—3 p.m.

Place: Agency for Health Care Policy and Research Willco Building, 3rd Floor Conference Room 6000 Executive Boulevard Rockville, MD 20852.

This meeting will be closed to the public.

Purpose: The Technical Review Committee's charge is to provide, on behalf of the AHCPR Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposals regarding the User Liaison Program (ULP) Mail Key Support Services contract.

The purpose of this contract is to provide for the timely merging and mailing of letters of invitation to User Liaison Program (ULP) workshops through use of a ULP developed, automated data base. The contractor will use and maintain a data base of State legislators, Governors and their staff, Federal and State executive branch, and local health officials, as well as selected public and private users of health services research including—health care consumers, purchasers, plans, practitioners, and policymakers. The contractor will perform mail merges for all letters of invitation and mail such invitations numbering between 3500 and 6000 as bulk mailings. Using the data in the database, the contractor will generate an annual *User Liaison Program Directory.* These services are required to ensure the timely dissemination of AHCPR research findings and related publications to the research community and general public.

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above referenced Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to protect the free and full exchange of views in the contract evaluation process and safeguard confidential proprietary information, and personal information concerning individuals associated with the proposals that may be revealed during the meeting. This action is taken in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, 5 USC 522(b)(c)(6), 41 CFR 101–6.1023 and Department procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Serena Toro, User Liaison Program, Center for Health Information Dissemination, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 401, Rockville, Maryland 20852, 301/594–6668.

Dated: September 11, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–24651 Filed 9–16–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Expert Workshop Regarding Medical Monitoring in Bunker Hill, ID; Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

Name: Expert Workshop Regarding Medical Monitoring in Bunker Hill, ID.

Times and Dates: 8 a.m.–5 p.m., September 23–24, 1997.

Place: The D. Abbott Turner Center at Emory University, 703 Clifton Road, NE, Atlanta, GA 30329, telephone 404/712–6725.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: ATSDR is considering the appropriateness of medical monitoring for populations who lived around the former Bunker Hill lead smelting facility (the Bunker Hill Superfund Site) in the Silver Valley area of Idaho during a time of excess exposures of public health significance. As Page 2 part of this consideration process, ATSDR is convening a series of workshops to examine the appropriateness and feasibility of a medical monitoring program.

The purpose of the medical monitoring program is to provide a public health service to communities affected by exposures to hazardous substances. This is accomplished by screening target populations at significant risk of a specific health effect or outcome, identifying individuals in need of further diagnosis or treatment, and arranging for appropriate referrals.

Section 104(i)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended (42 U.S.C. 9604(i)(9)), provides for the Administrator, ATSDR, to initiate a health surveillance program for populations at significantly increased risk of adverse health effects as a result of exposure to hazardous substances released from a facility. A program included under health surveillance is referred to as ''medical monitoring or screening'' by ATSDR and is defined in the legislation as ''the periodic medical testing to screen people at significant increased risk for disease.''

ATSDR has established criteria to determine when medical monitoring is an appropriate health activity and the requirements for establishing a medical monitoring program at a site. The legislation requires that a mechanism to refer people for treatment be included in the program. The statute does not authorize ATSDR to provide medical treatment; thus, medical monitoring is performed as a community service, not a health study.

ATSDR is convening three expert workshops to assist in the evaluation of a medical monitoring program at the Bunker Hill site. If a program is deemed appropriate, the Agency will develop a medical monitoring plan for the target population(s). The first workshop, was held on August 19–20, 1997. This notice announces the second workshop.

Matters to be Considered: The objective of this workshop is to use all available relevant data from ATSDR, including that produced by the first workshop, to make individual recommendations and answer questions related to:

(1) The analysis of specific outcomes as candidates for monitoring from the first workshop, (2) further definition of the target populations from the first workshop, (3) the consideration of other heavy metals exposures as moderators of lead-based medical monitoring recommendations, and

(4) medical decision analysis related to the Bunker Hill site. Scientists with expertise specific to the health outcomes under consideration will convene to define appropriate screening tests to be included in the medical monitoring program based on the proposed outcomes and eligible populations. Also, the workshop will provide ATSDR guidance in the development of clinical evaluation protocols that could be included in a medical monitoring program.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Vivian Rush, M.D., Medical Officer, ATSDR, Division of Health Education and Promotion, 1600 Clifton Road, NE, M/S E–33, Atlanta, Georgia 30333, telephone 404/639–5080 or Gregory Thomas, Senior Regional Representative, ATSDR Region X, Seattle, WA 98101, telephone 206/553–2113.

Dated: September 11, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–24637 Filed 9–16–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meetings

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following Fetal Alcohol Syndrome (FAS) Prevention meetings:

Name: 1997 Fetal Alcohol Syndrome (FAS) Surveillance and Prevention Grantees' Meeting.

Time And Date: 8 a.m.–5:30 p.m., September 25, 1997.

Place: Beaver Run Resort and Conference Center, 620 Village Road, Breckenridge, Colorado 80424, 970/453–6000.

Status: Open to CDC grantees conducting FAS epidemiologic surveillance and prevention projects among various States and universities. Persons in the general public wishing to participate may telephone 770/488–7268, e-mail (GCL1@cdc.gov) or fax (770/488–7361) their request.

Purpose: The annual meeting of CDC's FAS grantees is held in order to exchange information regarding the funded projects' activities and progress.

Matters To Be Discussed: Agenda items include a CDC update related to FAS epidemiologic surveillance and prevention activities, and summary reports from each of the grantees. Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Gregg Leeman, Fetal Alcohol Syndrome Prevention Section, NCEH, CDC, 4770 Buford Highway, NE, MS:F15, Atlanta, Georgia 30341, telephone 770/488–7268, e-mail GCL1@cdc.gov, fax 770/488–7361.

Name: Prevention and Management: Fetal Alcohol Syndrome and Prenatal Substance Abuse, sponsored by the Colorado Fetal Alcohol and Substance Abuse Coalition and CDC's Division of Birth Defects and Developmental Disabilities.

Times And Dates: 3 p.m.–7 p.m., September 25, 1997; 7:30 a.m.–5 p.m., September 26, 1997; 7:30 a.m.–4:30 p.m., September 27, 1997.

Place: Beaver Run Resort and Conference Center, 620 Village Road, Breckenridge, Colorado 80424, 970/453–6000.

Status: Open. Persons wishing to participate in the conference may register by contacting Elizabeth Franz, telephone 303/756–8380; e-mail fasconf@aol.com; or fax 303/759–8861. The conference registration fee is $175.00.

Purpose: Conference objectives are to present: Effective models for identification of and intervention with high-risk women; current research on screening and diagnostic methods and interventions for the child prenatally exposed to alcohol; current public health and epidemiological data; current research about the effects of alcohol and other drugs on fetal development; to discuss policy, legal and criminal justice issues related to FAS; and to explore community-based prevention programs.

Matters To Be Discussed: The conference is built around six areas of emphasis: Intervention with high-risk women; Working with the FAS affected child; Public health and epidemiology; Clinical and research issues; Policy and legal issues; Community issues and prevention programs.

Contact Person For More Information: Elizabeth Franz, Colorado Fetal Alcohol and Substance Abuse Coalition Conference Office, telephone 303/756–8380, fax 303/759–8861, e-mail fasconf@aol.com.

Dated: September 11, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–24635 Filed 9–16–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., October 16, 1997; 8:30 a.m.–12 p.m., October 17, 1997.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: The Council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include follow-up discussion on issues related to isoniazid prevention therapy; discussions on scientific basis of TB vaccine; TB vaccine development and implementation; economic issues relating to TB vaccines; and developing long term goals and/or issues of ACET. Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Janet Cleveland, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

Dated: September 11, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–24636 Filed 9–16–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0022]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 17, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attention: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Judith V. Bigelow, Office of Information

Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1479.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance:

Notice of Availability of Sample Electronic Product—21 CFR Parts 1020, 1030, 1040, and 1050 and FDA Form 2767 (OMB Control No. 0910–0048—Reinstatement)

Under sections 532 through 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii through 360ss), FDA regulates electronic products that emit radiation. Section 532 of the act directs the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program designed to protect the public health and safety from electronic radiation, and authorizes the Secretary to procure (by negotiation or otherwise) electronic products for research and testing purposes and to sell or otherwise dispose of such products.

FDA's Center for Devices and Radiological Health (CDRH) conducts laboratory compliance testing of products covered by regulations for product standards in parts 1020, 1030, 1040, and 1050 (21 CFR parts 1020, 1030, 1040, and 1050). The ''Notice of Availability of Sample Electronic Product'' (Form FDA 2767) is used to inform CDRH of the location of sample products that are being requested for testing to confirm that the products comply with performance standards. Form FDA 2767 is a summary form which reports information as required by parts 1020, 1030, 1040, and 1050.

FDA also uses this information to locate and select sample products to ensure conformance with regulations. In the event this information were not collected by CDRH, each manufacturer would have to respond in letter format with all the data now being recorded on Form FDA 2767, which would require more time and expense. Testing an appropriate percentage of these products to protect the public would also be hindered by the slower process.

The respondents to this collection of information are manufacturers of electronic products.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Part and Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1020, 1030, 1040, 1050, and Form FDA 2767	145	11.03	1,600	0.09	144
Totals					144

There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimates are based on actual data collected from industry over the past 3 years, where there has been an average of 1,600 annual responses to FDA from 145 respondents each year.

Dated: September 9, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–24581 Filed 9–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–52]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimate burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Conditions for Coverage of Supplier of End Stage Renal Disease (ESRD) Services and Supporting Regulations Contained in 42 CFR 405.2100–2171; *Document No.:* HCFA–R–52 (OMB#0938–0386); *Use:* These conditions of coverage are needed to ensure proper distribution and effective utilization of ESRD treatment sources. In addition, the conditions maintain and improve the efficient delivery of care by physicians and dialysis facilities; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Federal Government; *Number of Respondents:* 2,976; *Total Annual Responses:* 2,976, *Total Annual Hours:* 100,937.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comment and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

Dated: September 10, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–24652 Filed 9–16–97; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–898–NC]

Medicare and Medicaid Programs; Announcement of Additional Applications From Hospitals Requesting Waivers for Organ Procurement Service Area

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces six additional applications that HCFA has received from hospitals requesting waivers from dealing with their designated organ procurement organizations (OPOs) in accordance with section 1138(a)(2) of the Act. It supplements notices published in the **Federal Register** on January 19, 1996, May 17, 1996, November 8, 1996, and April 21, 1997, that announced hospital waiver requests received by HCFA. This notice requests comments from OPOs and the general public for our consideration in determining whether these waivers should be granted. This notice also makes a technical correction to two of the listings in the April 21, 1997 notice.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on November 17 1997.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–898–NC, P.O. Box 7517, Baltimore, MD 21244–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–898–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Mark A. Honey, (410) 786–4554.

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 1996, May 17, 1996, November 8, 1996, and April 21, 1997, we published notices in the **Federal Register** (61 FR 1389, 61 FR 24941, 61 FR 57876, and 62 FR 19326) that announced applications which HCFA had received from hospitals requesting a waiver from dealing with their designated organ procurement organizations (OPOs) in accordance with section 1138(a)(2) of the Social Security Act (the Act). This notice supplements these four notices. Section 1138(a)(1)(A)(iii) of the Act provides that a hospital or rural primary care hospital that participates in the Medicare or Medicaid programs must establish written protocols for the identification of potential organ donors.

Section 155 of the Social Security Act Amendments of 1994 (SSA'94) (Pub. L. 103–432) amended section 1138 of the Act to require that effective January 1, 1996, a hospital must notify the OPO designated for the service area in which it is located of potential organ donors (sections 1138(a)(1)(A)(iii) and (a)(3)(B) of the Act). The hospital must also have an agreement to do so only with that designated OPO (sections 1138(a)(1)(C) and (a)(3)(A)).

The statute also provides that the hospital may obtain a waiver of these requirements from the Secretary. A waiver would allow the hospital to have an agreement with an ''out-of-area'' OPO (section 1138(a)(2)) if it meets conditions specified in the statute (section 1138(a)(2)(A) (i) and (ii)).

The law further states that in granting a waiver, the Secretary must determine that such a waiver: (1) Would be expected to increase donation; and (2) will assure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the out-of-area OPO (section 1138(a)(2)(A)). In making a waiver determination, the Secretary may consider, among other factors: (1) Cost effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO service area due to the definition of metropolitan statistical areas (MSAs); and (4) the length and continuity of a hospital's relationship with the out-of-area OPO (section 1138(a)(2)(B)). Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver applications within 30 days of receiving the application and offer interested parties an opportunity to comment in writing within 60 days of the published notice.

Regulations at 42 CFR 486.316(d) provide that if HCFA changes the OPO designated for an area, hospitals located in that area must enter into agreements with the newly designated OPO or submit a request for a waiver within 30 days of notice of the change in designation. The criteria that the Secretary will use to evaluate the waiver in these cases are the same as that described above under section 1138(a)(2)(A) of the Act and incorporated in the regulations at § 486.316(e). Section 486.316(g) further specifies that a hospital may continue to operate under its existing agreement with an out-of-area OPO while HCFA is processing the waiver request.

Earlier this year HCFA redesignated all OPO service areas as a result of the 2-year recertification process required under the statute and regulations at § 486.304(e)(2).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) that has been supplied to each hospital. This Program Memorandum detailed the waiver process and discussed the information that hospitals must provide in requesting a waiver. We indicated that upon receipt of the waiver requests, we would publish a **Federal Register** notice to solicit public comments, as required by law (section 1138(a)(2)(D)).

We will then review the requests and comments received. During the review process, we may consult on an as-needed basis with agencies outside the HCFA Central Office, including the Public Health Service's Division of Transplantation, the United Network for Organ Sharing, and HCFA regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We then will make a final determination on the waiver requests and notify the affected hospitals and OPOs.

III. Additional Hospital Waiver Requests

As allowed under § 486.316(e), the following six hospitals have requested waivers to have an agreement with an alternative, out-of-area OPO, as a result of changes in their designated OPOs due to the redesignation of OPO service areas earlier this year. The listing includes the name of the facility, the city and State location of the facility, the

requested OPO, and the currently designated area OPO. These hospitals have submitted timely waiver requests and may work with the requested OPO rather than the designated OPO pending our review.

Name of facility	City	State	Requested OPO	Designated OPO
Alamance Regional Medical Center	Burlington	NC	NCNC	NCBG
Bullhead Community Hospital	Bullhead City	AZ	AZOB	NVLV
Cooley Dickinson Hospital Inc	Northhampton	MA	MAOB	CTHH
Ohio Valley Medical Center	Wheeling	WV	PATF	OHLP
Reynolds Memorial Hospital	Glen Dale	WV	PATF	OHLP
Wheeling Hospital	Wheeling	WV	PATF	OHLP

IV. Technical Correction

In the April 21, 1997, notice with comment period at 62 FR 19328, in the first chart, the listings of the OPO codes of the requested and designated OPOs for Crestline Memorial Hospital and River Valley Health System were inadvertently reversed. The corrected entries for these hospitals read as follows:

Name of facility	City	State	Requested OPO	Designated OPO
River Valley Health System	Ironton	OH	OHLP	KYDA
Crestline Memorial Hospital	Crestline	OH	OHLP	OHLC

V. Keys to the OPO Codes

The keys to the acronyms used in the listings to identify OPOs and their addresses are as follows:

AZOB—DONOR NETWORK OF ARIZONA, 3877 North Seventh Street, Phoenix, AZ 85014

CTHH—NORTHEAST OPO AND TISSUE BANK, Hartford Hospital, 80 Seymour Street, Hartford, CT 06102–5037

KYDA—KENTUCKY ORGAN DONOR AFFILIATES, 105 East Broadway, Louisville, KY 40202

MAOB—NEW ENGLAND ORGAN BANK, INC., One Gateway Center, Newton, MA 02158

NCBG—CAROLINA LIFE CARE, North Carolina Baptist Hospitals, Medical Center Boulevard, Winston-Salem, NC 27157

NCNC—CAROLINA ORGAN PROCUREMENT, 702 Johns Hopkins Drive, Greenville, NC 27834

NVLV—NEVADA DONOR NETWORK, 4580 Southeastern Avenue, Suite 33, Las Vegas, NV 89119

OHLC—LIFE CONNECTION OF OHIO, 1545 Holland Road, Suite C, Maumee, OH 43537

OHLP—LIFELINE OF OHIO, 770 Kinnear Road, Suite 200, Columbus, OH 43212

PATF—CENTER FOR ORGAN RECOVERY AND EDUCATION, 204 Sigma Drive, RIDC Park, Pittsburgh, PA 15238.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection requirement should be approved by OMB, Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information to be collected.

The information collection requirement and the burden associated with requiring a Medicare or Medicaid participating hospital to have an agreement with the OPO designated for its area or to submit a waiver request to HCFA for approval to have an agreement with an OPO other than the OPO designated for its service area currently are approved under OMB approval number 0938–0688 (HCFA–R–13), with an expiration date of November 30, 1997.

Authority: Section 1138 of the Social Security Act (42 U.S.C. 1320b–8).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774 Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: September 2, 1997.

Bruce M. Fried,

Director, Center for Health Plans and Providers, Health Care Financing Administration.

[FR Doc. 97–24644 Filed 9–16–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: December 1996

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of December 1996, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an

excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ALVAREZ, MANUEL JESUS, LEXINGTON, KY	09/07/97
BICKFORD, ROBERT F., ROYAL PALM BEACH, FL	09/07/97
BISHOP, RALPH J., EHRHARDT, SC	09/03/97
BOSWELL, SYLVIA HYMAN, SPRINGFIELD, SD	09/03/97
BRADY, RICHARD A., TAYLORVILLE, IL	09/02/97
BRADY, REBECCA F., SENECA, IL	09/02/97
BROOKS, VERNESSA SMITH, ALTANTA, GA	09/03/97
BURPO, CARL E., BELLEVILLE, IL	09/02/97
CARR, HIRAM THOMAS, FORT WORTH, TX	09/09/97
CARROLL, BEN O., EGLIN AFB, FL	09/03/97
CHAMBERLAIN, DEBRA L., EUGENE, OR	09/04/97
CHUCKAREE, ANTHONY, W PALM BEACH, FL	09/07/97
DAVIS, JOHN R., ROSWELL, NM	09/09/97
DAVIS, JIMMY DOYLE, HUFFMAN, TX	09/09/97
DAVIS, HOWARD, MONTGOMERY, AL	09/03/97
DE LOS HEROS, REINALDO, SALEM, NH	09/04/97
DESPEN, DANIEL, MALVERNE, NY	09/03/97
DUNN, JERRY, MONTGOMERY, AL	09/03/97
EZRA, JOSEPH, BORON, CA	08/26/97
FAGLEY, REBECCA G., NORTH CANTON, OH	08/26/97
FLOWE, CURTIS GERARD, FRESNO, CA	08/26/97
FREDMAN, SANDRA, DEL REY BEACH, FL	09/03/97
FRUEAN, WILLIAM, HONOLULU, HI	08/26/97
GARBUTT, KARY JEAN, LOS ANGELES, CA	08/26/97
GARLING, VINCENT H., LITTLE ROCK, AR	09/09/97
GIST, GLENN L., ATHENS, TX	09/27/96
GIST MEDI-REPS, INC, ATHENS, TX	09/27/96
GREEN, SHIRLEY ANN, NOWATA, OK	09/09/97
HAYNES, PAMELA JEAN, BRYAN, TX	09/04/97
HENDRICKS, SHERYL, TURKEY CREEK, LA	09/09/97
HOPSON, LATRICIA, ATLANTA, GA	09/03/97
HYDE, RODERICK M., PIERRE, SD	09/03/97
JOHNSON, HELEN MARIE, HOT SPRINGS, AR	09/04/97
JOSEPH, BONITA, DECATUR, GA	09/03/97
JOSEPH, JOHN, GAINESVILE, GA	09/03/97
KESSLER, MELISSA JULIA, BOISE, ID	08/26/97
KNOWLES, WILBERT LLEWELLYN, W PALM BEACH, FL	09/07/97
LAMPKIN, LATTARA, RIVERDALE, GA	09/03/97
LEE, MARK W., FLORENCE, SC	08/26/97
LIPSITZ, JACOB, PHILADELPHIA, PA	09/03/97
LISK, WILLIAM A., MANSFIELD, OH	09/02/97
LOCK, ABRAHAM JOSEPH, BROOKLYN, NY	08/26/97
LUANSING, CARLOS, RANCHO CUCAMONGA, CA	09/04/97
MARGINI, LORENZO, BROOKLYN, NY	09/03/97
MARINO, JAMES, SACRAMENTO, CA	08/26/97
MORA, NOEMIE MARIE, BROWNSVILLE, TX	09/04/97
MUENCH, JANICE MCCLENDON, FORT WORTH, TX	09/04/97
NATIONAL OSTOMY SUPPLY, INC, GREENBURG, PA	09/17/96
NAZARENO, JOSEFINA JUDAL, SAN BERNARDINO, CA	09/04/97
NUCKLOS, ROSE LEE, FORT COBB, OK	08/26/97
ORNELAS, PAMELA NOREEN, ARVADA, CO	09/03/97
PARKER, RICK ALLEN, WINCHESTER BAY, OR	09/04/97
PATTERSON, KATHLEEN ANNE, PORTLAND, OR	09/04/97
PONCE, VIRGINIA, MIAMI, FL	09/07/97
RATLIFF, DOTTIE LOU, PORTLAND, OR	09/04/97
REESE, SYLVIA, OAK PARK, MI	09/02/97
REESE, ROOSEVELT, OAK PARK, MI	09/02/97
SANDERS, MAXIE, MACON, MS	09/03/97
SANTANA, RONALD STEVEN, SHERIDAN, OR	09/04/97
SAUNDERS, LISA WILSON, SYRACUSE, NY	09/03/97
SCHILLING, HENRY J. JR, RICHMOND, VA	09/03/97
SEIDE, CHARLES, WOODMERE, NY	09/03/97
SHORE, STANLEY D., NORTH WALES, PA	09/03/97
SOKOLSKI, KENNETH, IRVINE, CA	09/04/97
TATE, PEARLIE, MACON, MS	09/03/97
TODD, TIMOTHY D., INDIANAPOLIS, IN	09/02/97
VANMETER, PAMELA, KENNETT, MO	09/03/97
WHITFIELD, THOMAS P., CHARLOTTE, NC	09/07/97

Subject, city, state	Effective date
WOODING, RICHARD P., WICHITA, KS	08/26/97
YAMADA, AKIYOSHI, MIAMI, FL	09/07/97
YOUNG, JACQUELINE C., FLORISSANT, MO	09/02/97
ZUERCHER, KATHY ANNA, PORTLAND, OR	09/04/97
PATIENT ABUSE/NEGLECT CONVICTIONS	
ANDERSON, LYNETTE CAROL, SALT LAKE CITY, UT	09/03/97
BENSON, ARENCTHER, WATERVALLEY, MS	09/03/97
BERGERON, KATHERINE, EASTHAMPTON, MA	09/04/97
CADET, LORA MARIE, MILTON, MA	09/04/97
CLARK, CLINT SHANNON, GREENBRIER, AR	09/09/97
COLE, TONYA S., CHARLESTON, WV	09/03/97
COLLINS, VELMA E., YOUNGSTOWN, OH	09/02/97
COSME, FELICITA, LAWRENCE, MA	08/27/97
DEKORTE, GARTH, LANSING, MI	09/02/97
DICKENSON, CHAD BRYAN, MARLOW, OK	09/09/97
DIEDRICH, DOUGLAS CHARLES, KONAWA, OK	09/09/97
DUDLEY, NEDDIE MAE, PARIS, TX	09/04/97
EDGEWORTH, DENNIS D., WOODLAWN, IL	09/02/97
ETIENNE, YOLA, BROCKTON, MA	09/04/97
FARMER, STACY MARIE, NEW ORLEANS, LA	09/09/97
FISHER, ELAINE L., MATTOON, IL	09/02/97
GILES, VICTAVIA, LAWTON, OK	09/09/97
GROSS, TINA SHYVONNE, CORSICANA, TX	09/04/97
GUINN, SHAUN L., INSTITUTE, WV	09/03/97
GUTHRIE, DODIE MARIE, GLENPOOL, OK	09/09/97
HARDESTY-GROSS, CAROL A., STREETSBORO, OH	09/02/97
HENTHORN, MARIE H., CUYAHOGA FALLS, OH	09/02/97
HERRING, KENYA NICOLE, DELHI, LA	09/09/97
HORACE, JOHN L, ROCHESTER, NY	09/03/97
JOACHIM, LEONARD, MOUNTAIN LAKES, NJ	09/02/97
JOHNSON, GLORIA LOUISE, ALEXANDRIA, LA	09/09/97
KEMP, DEON C., FRANKLIN, LA	09/09/97
KENT, PAULETTE J., HINSDALE, NY	09/04/97
LEWIS, JACQUELINE, GRAND COTEAU, LA	09/04/97
LOPEZ, JUAN, HONDO, TX	09/04/97
LOUDENSLAGER, JULIE, CHEEKTOWAGA, NY	09/03/97
MAYFIELD, TYNA L., LAKE CITY, AR	09/09/97
MCCOOL, JANET, SAVANNAH, NY	09/03/97
MCCRORY, LYNDA, ALBUQUERQUE, NM	09/09/97
MCDANIEL, SARAH L., PRESCOTT, AR	09/09/97
MCNAMARA, LORI MARIE, SYRACUSE, NY	09/04/97
MIDDLETON, SHERRY, FLINT, MI	09/02/97
MONCUR, LEONE A., BELLE FOURCHE, SD	09/03/97
MOREAU, ALFRED, LYNN, MA	09/04/97
NICHOLS, CHAQUITA LASHANETTE, CANTON, MS	09/03/97
O'NEIL, JULIE MAY, MONUMENT BEACH, MA	09/04/97
PETERSON, FRANK R, WILKES-BARRE, PA	09/03/97
PHILLIPS, WILLIE L, BIRMINGHAM, AL	09/03/97
PUGH, CLARA C, VOSSBURG, MS	09/03/97
RILEY, STACEY EILEEN, ALEXANDRIA, LA	09/09/97
ROBERTS, JOSEA MAE, PONTIAC, MI	09/02/97
RODRIQUES, CYNTHIA, SWANSEA, MA	09/04/97
SCOTT-TURNER, CHERRY, SACRAMENTO, CA	09/04/97
SILVA, RAYMOND, LOWELL, MA	09/04/97
SINGLETON, TERIMAL DION, MONROE, LA	09/09/97
SMITH, DARREN SCOTT, SAINT JOE, AR	09/09/97
SMITH, BILLIE, COLUMBUS, MS	09/03/97
THOMAS, YOLONDA, HERMITAGE, AR	09/09/97
TRUDEN, GEORGIA, EASTHAMPTON, MA	09/04/97
VALDEZ, JOSE, TRENTON, MI	09/02/97
VEGA, JOSEPHINE MARY, SAGINAW, MI	09/02/97
WALPOOL, OPERAL, HOUSTON, TX	09/04/97
YOUNG, MINNIE, SUMMERVILLE, SC	09/07/97
CONVICTION FOR HEALTH CARE FRAUD	
CASIMIR, ANISHA, WESTCHESTER, NY	09/03/97
HERLIHY, DANIEL JAMES, TEXARKANA, TX	09/04/97
KELLY, DENISE, MAYS LANDING, NJ	08/26/97
LAZAR, RONALD, NEW ORLEANS, LA	09/09/97
SMITH, DELORES J, MARIANNA, FL	09/03/97
STOKES, JOHN HOWARD, FORT WORTH, TX	09/09/97

Subject, city, state	Effective date
TENCER, STEVEN B, YAZOO CITY, MS	09/09/97
CONTROLLED SUBSTANCE CONVICTIONS	
BRIGGS, TERRI, SUTTONS BAY, MI	09/02/97
BUENCAMINO, ARTURO, BABYLON, NY	09/03/97
CRUZ, CAROL M, BIG RAPIDS, MI	09/02/97
MALIK, MUKHTAR A, BAY CITY, MI	09/02/97
O'DWYER, JAMES, NASHVILLE, TN	09/03/97
WILLISON, MARLENE K, JENISON, MI	09/02/97
WILSON, CLARENCE WALKER, FLINT, MI	09/02/97
LICENSE REVOCATION/SUSPENSION/SURRENDER	
ALBER, REVA L, NORMAL, IL	08/26/97
AUSTIN, GARY LYNN, ALEXANDRIA, VA	09/03/97
BARATTI, CARMEN, VOORHEES, NJ	09/04/97
BERNARDUCCI, NICOLE M, HAMPTON, NH	09/04/97
BONOMO, SHERRY, ATWOOD, IL	08/27/97
BRYAN, MARY, MANCHESTER, NH	09/04/97
CALLAHAN, DANIEL JOSEPH, ST PETERSBURG, FL	09/03/97
CAPPEL, LAURENCE R, GRAND BLANC, MI	09/02/97
CARR, MARGARET MARY, TUSTIN, CA	09/04/97
COLLINS, FRED, GALLATIN, TN	09/03/97
CORTIS, TIMOTHY JAMES, STERLING HEIGHTS, MI	09/02/97
CULLY, MILTON A, ALGONQUIN, IL	09/02/97
DAVIS, IRMA, ROCKFORD, IL	09/02/97
DORN, MARION DOUGLAS, ELDORADO, IL	08/27/97
DOUTHIT, DANIEL RAY, LA MIRADA, CA	09/04/97
DOWNEY, MELISSA C, OXFORD, MS	08/26/97
DUMLAO, JULIET, CHICAGO, IL	09/02/97
DUTTON, ROBERT A, ALPENA, MI	08/26/97
FRIEDMAN, JENNY M, COLEMAR, PA	09/03/97
FRYE, KENNETH W, BYRON CENTER, MI	09/02/97
GAMAGE, NIMAL KEVIN, MORENO VALLEY, CA	09/04/97
GASAWAY, PATRICIA, HAMILTON, IL	09/02/97
GRAHAM, GEORGE W JR, KNOXVILLE, TN	09/03/97
HENDRICKSON, ERNEST STUART, MURRYSVILLE, PA	09/03/97
HILE, LISA M, GLENVIEW, IL	09/02/97
HOLT, MARY E, LITCHFIELD, IL	08/27/97
HORVAT, SUSAN D, JOLIET, IL	09/02/97
HUBAH, CLARENCE E, WASHINGTON, DC	08/26/97
INGRAM, CHARLENE PAULETTE, MORENO VALLEY, CA	08/26/97
JABLANOVEC, IDA T, CHICAGO, IL	08/27/97
JOHNSON, KENNEY, CHICAGO, IL	09/02/97
JONES, SUSAN MARY, WARREN, MI	08/27/97
KHALILI, ELI J, HAGERSTOWN, IN	08/27/97
KIM, JULJA, ROSELLE, IL	08/26/97
LAMARCA, DONALD DOMINIC, ELGIN, IL	09/02/97
LAMB, SANDRA K, EASTPOINTE, MI	09/02/97
LAMPBELL, HARVEY J, SAN FRANCISCO, CA	09/04/97
MAGEE, ALINE, CHICAGO, IL	09/02/97
MANGAN, CHARLES, NEWPORT BEACH, CA	08/26/97
MARKOFF, MORTON, CHERRY HILL, NJ	09/02/97
METCALF, RANDAL, GODFREY, IL	09/02/97
MILLER, DEBBIE L, CRANFORD, NJ	09/02/97
MILLIGAN, ASTRIDA M, TRENTON, MI	08/27/97
MYERS, HOWARD, MOUNT LAUREL, NJ	09/04/97
NESSMAN, LAWRENCE, WAYNE, NJ	09/02/97
NOWACKI, SUSAN M, CHICAGO, IL	08/26/97
NYLIN NESBIT, SHELLEE L, ALEDO, IL	09/02/97
OLSEN, JEAN, DES PLAINES, IL	09/02/97
PURDY, KEVIN PAUL, HAYWARD, CA	09/04/97
QUILLAN, ANNETTE M, LUDINGTON, MI	09/02/97
RAMIREZ, LINDA SUE, SIERRA MADRE, CA	09/04/97
RAMPA, CARLO J., CHICAGO, IL	09/02/97
RURAK, JOHN A., ELMIRA, NY	09/03/97
SINGHAL, ANIL M., SAN JOSE, CA	09/04/97
SMITH, CAMERON HEWES, REDMOND, WA	09/04/97
SULLIVAN, SHERRY, TAYLORSVILLE, MS	08/26/97
TARASZKA, STEVEN ROBERT, ATLANTA, GA	09/07/97
TAYLOR, PATRICIA ANN, BOLINGBROOK, IL	09/02/97
THOMAS, MARY NEDIYAVILA, CHICAGO, IL	09/02/97
TOLER, EVA M., ROANOKE, VA	08/26/97

Subject, city, state	Effective date
TRACEY, PAULA SANSONE, LOS ANGELES, CA	09/04/97
TUNG, FRANK KWONG FU, CHICAGO, IL	09/02/97
UNGLES, JANE ALYN, LONG BEACH, CA	09/04/97
VIVIT, SALVADOR A., DES PLAINES, IL	08/27/97
WILSON, SHIRLEY, OAK PARK, IL	09/02/97
WINHOLTZ, WILLIAM L., DECATUR, IL	09/02/97
FEDERAL/STATE EXCLUSION/SUSPENSION	
CURRY, CHARLES M., OLDWICK, NJ	09/02/97
DULL, JOHN W., BLOOMFIELD, NJ	09/04/97
G H STOKES ASSOCIATION, INC., COATSVILLE, PA	09/03/97
HOROWITZ, GERALDINE H., COATSVILLE, PA	09/03/97
MORRISON, MARK BRYANT, PURDYS, NY	09/04/97
ROTHKOPF, JOSEPH, NEW YORK, NY	09/03/97
227 NINTH AVENUE PHARMACY, INC., NEW YORK, NY	09/03/97
FRAUD/KICKBACKS	
MASON, MELVYN LUMBERVILLE, PA	07/24/97
OWNED/CONTROLLED BY CONVICTED EXCLUDED	
CLINIC MAKERS OF MIAMI, INC., LEXINGTON, KY	09/07/97
HILDA'S HERITAGE HOME, INC., LENNOX, SD	09/09/97
PRO CARE OF FULTON, INC., ATLANTA, GA	09/03/97
REASON CHIROPRACTIC, WOODLAND PARK, CO	09/03/97
VISHNU PHARMACY, CHICAGO, IL	08/26/97
WEST KENDALL MEDICAL CENTER, MIAMI, FL	09/07/97
YOUTH BELIEVING & ACHIEVING, LITHONIA, GA	09/07/97
DEFAULT ON HEAL LOAN	
ALVARADO-SANCHEZ, MAYDA C., COMERIO, PR	09/02/97
AVERY, WILLIAM K., WASHINGTON, DC	09/03/97
BASEDOW, ARLENE M., SOUTH POINT, OH	09/02/97
BESSELL, RUSSEL E., BRISTOL, VA	09/03/97
BHARUCHA, NAYANA, BLOOMINGTON, IL	09/02/97
BOBO, ANTHONY D., TAMPA, FL	09/03/97
BROWN, PEARL-ANN, BRONX, NY	09/02/97
BRUNS, FAYLENE A., FARMINGTON, MN	09/02/97
CADOGAN, ROBERT V., NEW ORLEANS, LA	08/26/97
CASE, JOHN P. JR., NEW HYDE PARK, NY	09/02/97
CHLUPEK, BARBARA A., LITTLETON, CO	09/03/97
CHURCH, STEVEN D., MERIDEN, CT	08/27/97
CLARK, MARVA J., SILVER SPRING, MD	09/03/97
CONKEY, CHARLES A., WESTERVILLE, OH	09/02/97
CONLEY, JOHN C., EAST PROVIDENCE, RI	09/03/97
CONWAY-MORRIS, BETH A., FAIRFIELD, OH	09/02/97
CORRIGAN, JAMES PATRICK, CHESTER SPNGS, PA	09/03/97
COSBY, RICHARD JR., NEW ORLEANS, LA	08/26/97
DELPRADO, RICK D., DES MOINES, IA	09/02/97
DICK, DAVID W., TULSA, OK	08/26/97
DISBROW, DAVID JOSEPH, OSHKOSH, NE	08/27/97
FIGUEROA, PABLO E., INVERNESS, FL	09/03/97
FRANCUS, IRWIN N., EAST NORTHPORT, NY	09/02/97
GAVALAS, ELAINE, NEW YORK, NY	09/02/97
GIUNTA, JOSEPH VINCENT, FARMINGDALE, NY	09/02/97
GOTLIN, DOUGLAS LEE, BROOKLYN, NY	09/02/97
GROCOFF, RONALD D., LAKE MARY, FL	09/03/97
GUDAN, JOHN A. JR., KENNER, LA	08/26/97
HARRISON, WAYNE S. JR., FAIRFIELD, CT	08/27/97
HOLEC, KEVIN M., EDEN PRAIRIE, MN	09/02/97
HORNE, KEVIN L., STOCKBRIDGE, GA	09/03/97
JACKSON, LENELL R., UNION CITY, GA	09/03/97
JIMENEZ, OMAR F., MIAMI, FL	09/03/97
LAMKIN, CHRISTOPHER G., DEXTER, MI	09/02/97
LONG, ANATOLE M., HURRICANE, UT	08/27/97
MANNING, LANCE D., NEW YORK, NY	09/02/97
MIXON, BARRY B., CHICAGO, IL	08/27/97
MUSICO, JOSEPH A., LAUREL, MD	09/03/97
NUNEZ, DAVID W., MCCONNELL AFB, KS	08/27/97
ORJI, JOHN EMENIKE, MARIETTA, GA	09/03/97
PEREZ, DAYSI E., NEW YORK, NY	09/02/97

Subject, city, state	Effective date
PETROSKY, MICHAEL J., COVINGTON, LA	08/26/97
PUIG, XIOMARA, MIAMI, FL	09/03/97
RABAH, WAJIH I., AGUADILLA, PR	09/02/97
RADI, ANTHONY W., HICKSVILLE, NY	09/02/97
ROJAS, EDUARDO ANTONIO, ALTAMONTE SPRINGS, FL	09/03/97
ROTHERY, BEVERLY A., MARIETTA, OH	08/27/97
SALOMON, ALIX P., CHICAGO, IL	08/27/97
SANCIO, ELAINE D. WITTERSCHEIN, JERSEY CITY, NJ	09/02/97
SANSONE, PETER J. (SAMSONE), BROOKLYN, NY	09/02/97
SMITH, RICKEY E., JAMAICA PLAIN, MA	08/27/97
SMITH, BRENT R., SPRING ARBOR, MI	09/02/97
SNYDER, CHARLOTTE J., STOCKTON, KS	09/03/97
STONE, BRETT E., POTEAU, OK	08/26/97
THOMPSON, BYRON J., CHICAGO, IL	09/02/97
TWOMLEY, JAMES D., HOLLAND, IN	09/02/97
WALL, HOMER G., LINCOLN, NE	09/03/97
WASHINGTON, GENEVA (WALKER), DAYTON, OH	09/02/97
WELDEN, SHIRLEY J., TULSA, OK	08/26/97
SECTION 1128Aa	
RAINBOW HOME MEDICAL EQPT CO., MIAMI, FL	06/20/97
RODRIGUEZ, LEONOR, MIAMI BEACH, FL	06/20/97
143 MEDICAL EQUIPMENT CO., MIAMI, FL	06/20/97

Dated: September 3, 1997.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Enforcement and Compliance.

[FR Doc. 97–24656 Filed 9–16–97; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Effective Medical Treatment of Heroin Addiction

Notice is hereby given of the NIH Consensus Development Conference on ''Effective Medical Treatment of Heroin Addiction,'' which will be held November 17–19, 1997, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on November 17, at 8:30 a.m. on November 18, and at 9 a.m. on November 19.

In the United States alone, approximately one-half million people are addicted to heroin. Estimates of heroin incidence (122,000 new users) in recent years suggest an increased incidence and an emerging pattern of drug use among the young. For many years, heroin addiction has been associated with increased criminal activity and human suffering. In the past 10 years, there has been a dramatic increase in the prevalence of human immunodeficiency virus (HIV), hepatitis C virus (HCV), and tuberculosis among intravenous heroin users. From 1991 to 1995 in major metropolitan areas, the annual number of heroin-related emergency room visits has increased from 36,000 to 76,000, and the annual number of heroin-related deaths has increased from 2,300 to 4,000. The associated morbidity and mortality further underscore the human, economic, and societal cost of heroin addiction.

Over the last 20 years, a significant body of evidence has accumulated on the neurobiology of heroin addiction and on the safety and efficacy of narcotic (methadone) maintenance treatment.

Although there have been other medications (e.g., levo-alpha acetylmethadol [LAAM]) subsequently determined safe and effective in narcotic maintenance treatment, the focus of this consensus development conference will be on methadone, because methadone has been the medication used in most narcotic treatment research. Evaluation studies have consistently shown methadone treatment to be effective in reducing drug use and crime and in enhancing social productivity. More recent studies demonstrate that methadone treatment is an effective method for preventing the spread of HIV, HCV, and tuberculosis among intravenous drug users.

Most heroin users are not receiving treatment. Most recent data indicate that there are approximately 112,000 patients in narcotic maintenance treatment. Barriers exist to both access to narcotic maintenance treatment and effective treatment, despite the science on the neurobiology of heroin addiction and the evidence demonstrating the effectiveness of treatment in reducing drug use and crime and preventing the spread of HIV and HCV. An important reason for some of these barriers is that narcotic maintenance treatment remains controversial. The science has not yet overcome the stigma of addiction and public perception about narcotic maintenance treatment.

Many members of the medical community and the public conceive of opiate addiction as a self-inflicted disease of the will, methadone treatment as mere narcotic substitution and relapses likely to follow treatment, drug-free treatment as the only valid rehabilitative method, and total abstinence from all drugs, including methadone, as the only valid treatment goal. Other obstacles include Federal and state government regulations limiting treatment providers and patient access and concerns about methadone diversion by patients and its consequences.

To address the most important and controversial issues surrounding narcotic maintenance treatment, the NIH has organized this 2½ day conference to present the available data on opiate agonist treatment for heroin addiction. The conference will bring together national and international experts in the fields of basic and clinical neuroscience, epidemiology, and natural history, prevention and treatment of heroin addiction, as well as representatives from the public.

After 1½ days of presentations and audience discussion, an independent, non-Federal consensus panel chaired by Dr. Lewis Judd, chair of the Department

of Psychiatry at the University of California at San Diego School of Medicine, will weigh the scientific evidence and write a draft statement that will be presented to the audience on the third day. The consensus statement will address the following key questions:

* What is the scientific evidence to support a conceptualization of opiate addiction as a medical disorder including natural history, genetics and risk factors, pathophysiology, and how is diagnosis established?

* What are the consequences of untreated opiate addiction to individuals, families and society?

* What is the efficacy of current treatment modalities in the management of opiate addiction including detoxification alone, non-pharmacological/psychosocial treatment, treatment with opiate antagonists, and treatment with opiate agonists (short-term and long-term)?

* What is the (scientific evidence for the) most effective use of opiate agonists in the treatment of opiate addiction?

* What are the important barriers to effective use of opiate agonists in the treatment of opiate addiction in the U.S., including perceptions and the adverse consequences of opiate agonist use, legal, regulatory, financial and programmatic barriers?

* What are the future research areas and recommendations for improving opiate agonist treatment and improving access?

The primary sponsors of this meeting are the National Institute on Drug Abuse and the NIH Office of Medical Applications Research. The conference is co-sponsored by the NIH Office of Research on Women's Health.

Advance information on the conference program and conference registration materials may be obtained from Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468–MEET, by e-mail at NIHconsensus@ProspectAssoc.com, or by visiting http://consensus.nih.gov on the World Wide Web.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the statement will be available beginning November 19, 1997, from the NIH Consensus Program Information Center, P.O. Box 2577, Kensington, Maryland 20891, phone 1–888–NIH–CONSENSUS (1–888–644–2667) and from the NIH Consensus Development Program site on the World Wide Web at http://consensus.nih.gov.

Dated: September 4, 1997.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 97–24628 Filed 9–16–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting of the National Cancer Advisory Board and its Subcommittees

Pursuant to Pub. L. 92–463, as amended, notice is hereby given of the meeting of the National Cancer Advisory Board (Board), National Cancer Institute (NCI), and its Subcommittees on September 23–25, 1997. The meetings of the Board and its Subcommittees will be open to the public as indicated below. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in secs. 552b(c)(4), 552b(c)(6), and 552(c)(9)(B), Title 5 U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications and for discussion of issues pertaining to programmatic areas and/or NCI personnel. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the applications or programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and premature disclosure of recommendations which would be likely to significantly frustrate the subsequent implementation of those recommendations.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 609, 6130 Executive Boulevard, MSC 7410, Bethesda, Maryland 20892–7410, (301) 496–5708 will provide summaries of the meetings and rosters of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Linda Quick-Cameron, Committee Management Officer, at (301) 496–5708 in advance of the meeting.

Name of Committee: Subcommittee on Activities and Agenda.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–5147.

Date of Meeting: September 23, 1997.

Place of Meeting: Bethesda Marriott Hotel (Pooks Hill), 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 7:00 p.m. to 9:00 p.m.

Agenda: To Conduct Preliminary Discussion of Future Programmatic and Personnel Activities and Policies.

Name of Committee: Subcommittee on Planning and Budget.

Contact Person: Ms. Cherie Nichols, Executive Secretary, National Cancer Institute, NIH, 7550 Wisconsin Avenue, Room 312, MSC 9010, Bethesda, MD 20892–9010, (301) 496–5515.

Date of Meeting: September 24, 1997.

Place of Meeting: Building 31, Conference Room 8/C Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: 12:30 p.m. to 1:30 p.m.

Agenda: To Discuss the NCI Budget and Various Planning Issues.

Name of Committee: Subcommittee on Special Actions for Grants.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD. 20892–7405, (301) 496–5147.

Date of Meeting: September 24, 1997.

Place of Meeting: Building 31, Conference Room 10/C Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD. 20892.

Closed: 4:05 p.m. to Adjournment.

Agenda: To Review and Discuss Grant Applications and Extramural/Intramural, Programmatic and Personnel Policies.

Name of Committee: Subcommittee on Clinical Investigations.

Contact Person: Dr. Robert Wittes, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 3A44, MSC 2440, 9000 Rockville Pike, Bethesda, MD 20892–2440, (301) 496–4291.

Date of Meeting: September 25, 1997.

Place of Meeting: Building 31, Conference Room 8/C Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD. 20892.

Open: 12:30 p.m. to 1:45 p.m.

Agenda: To Discuss the Design of Prospective Studies of the Impact of Managed Care on Cancer Clinical Investigations, Education and Training.

Name of Committee: National Cancer Advisory Board.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD. 20892–7405, (301) 496–5147.

Dates of Meeting: September 24–25, 1997.

Place of Meeting: Building 31, Conference Room 10/C Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD. 20892.

Open: September 24—8:30 a.m. to 4:00 p.m.; September 25—8:30 a.m. to 4:00 p.m.

Agenda: Report of the Director, National Cancer Institute; Legislative Update; Report of the President's Cancer Panel; Science Information System Report; NCAB Policy Statement: Impact of Managed Care on Cancer Clinical Investigations; Clinical Trials Program Review Group Report; NCI Exceptions Process; Cancer Control Program Review Group Report; Reorganization of Extramural Programs & Update on Centers; NIH & Managed Health Care Organizations; Colorectal Cancer Screening; GPRA Update for Advisory Councils; Changes in NIH Rebuttal Policy & NCAB Operating Procedures; Progress Review Groups Update; NCI Website Demonstrations; Subcommittee Reports and other Council business.

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; 93.392, Cancer Detection and Diagnosis Research; 93.394, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 11, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–24629 Filed 9–16–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: October 29–31, 1997.

Time: 8:30 a.m. until adjournment.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Carole Hudgings, Ph.D., R.N., Building 45, Room 3AN–18, 45 Center Drive, Bethesda, MD 20892, (301) 594–5976.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552(b)(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.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: September 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–24627 Filed 9–16–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–833981

Applicant: Laurel Croft, Temecula, CA

The applicant requests a permit to re-import 1 male and 2 female Hawaiian geese (*Branta sandvicensis*) and 1 male and 1 female Palawan peacock pheasant (*Polyplecton emphanum*) for the purpose of enhancement of the survival of the species through captive propagation.

PRT–833380

Applicant: David Owens, Texas A&M University, College Station,TX

The applicant requests a permit to import biological samples of multiple sea turtle species from Mexico, Grand Cayman, and Costa Rica for the purpose of scientific research related to survival of the species.

PRT–834298

Applicant: Miami Metrozoo, Miami, FL

The applicant requests a permit to re-export to Panama the carcass of one female harpy eagle (*Harpia harpyja*) which was imported from Panama into the United States to be prepared into an osteological specimen.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–834123

Applicant: Daniel Currier, Fargo, ND

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 12, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–24708 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–55–p

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On July 3, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 128, Page 36070, that an application had been filed with the Fish and Wildlife Service by Kenneth Werling, Celina, OH for a permit (PRT–830535) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 3, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 10, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 132, Page 37072, that an application had been filed with the Fish and Wildlife Service by Jim Deal, Ramsey, MN for a permit (PRT–831567) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 3, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 17, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 137, Page 38320, that an application had been filed with the Fish and Wildlife Service by Jan Seski, Murrysville, PA for a permit (PRT–830808) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 3, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 17, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 137, Page 38320, that an application had been filed with the Fish and Wildlife Service by Robert Killett, Sykesville, MD for a permit (PRT–831926) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Foxe Basin population, Northwest Territories, Canada prior to April 30, 1994, for personal use.

Notice is hereby given that on September 3, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 17, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 137, Page 38320, that an application had been filed with the Fish and Wildlife Service by Luis Bacardi, Coral Gable, FL for a permit (PRT–831868) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 3, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 10, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 132, Page 37072, that an application had been filed with the Fish and Wildlife Service by Norman Dunkle, Franklin, PA, for a permit (PRT–831443) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Northern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 4, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 3, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 128, Page 36070, that an application had been filed with the Fish and Wildlife Service by Kenneth Sandy, Snohomish, WA, for a permit (PRT–830978) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on August 14, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 17, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 137, Page 38320, that an application had been filed with the Fish and Wildlife Service by Brinton Jones, Grand Forks, ND, for a permit (PRT–831715) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 4, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 26, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 123, Page 34482 that an application had been filed with the Fish and Wildlife Service by Frederick Leonard, Alto, MI, for a permit (PRT–830818) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel population, Northwest Territories, Canada for personal use.

Notice is hereby given that on August 14, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 26, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 123, Page 34482, that an application had been filed with the Fish and Wildlife Service by Walter Krywucki, Jr., Chester, NJ, for a permit (PRT–830614) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Northern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on August 13, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: September 12, 1997.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–24707 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

CRADA With E.I. DuPont; Selected Sulfonylurea Herbicides in Water Resources of the Midwestern U.S.

AGENCY: Geological Survey, Interior.

ACTION: Notice.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a CRADA with E.I. DuPont to assess the occurrence of selected sulfonylurea herbicides in water resources of the midwestern United States.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact William Battaglin, USGS, (303) 236–5950 ext. 202, wbattagl@usgs.gov

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Robert M. Hirsch,

Chief Hydrologist.

[FR Doc. 97–24650 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: San Carlos Irrigation Project, Arizona

ACTION: Notice of proposed irrigation operation and maintenance (O&M) rate adjustment.

SUMMARY: The Bureau of Indian Affairs proposes to change the assessment rates for operating and maintaining the San Carlos Irrigation Project for the 1998 and 1999 irrigation season. The following table illustrates the impact of the rate adjustment.

SAN CARLOS IRRIGATION PROJECT

[Irrigation Rate Per Assessable Acre]

	Year		
	Present 1997	Proposed 1998	Proposed 1999
Rate	$30.00	$20.00	$26.00

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001, Telephone (602) 379–6956.

DATE: Interested parties may submit comments on the proposed rate adjustment. Comments must be submitted on or before October 17, 1997.

ADDRESSES: All comments concerning the proposed rate adjustment must be in writing and addressed to: Director, Office of Trust Responsibilities, Attn.: Irrigation and Power, MS#4513–MIB, Code 210, 1849 ''C'' Street, NW, Washington, D.C. 20240, Telephone (202) 208–5480.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with § 171.1(e) and 171.1(g) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the fixing and announcing the rates for annual operation and maintenance assessments and related information of Bureau of Indian Affairs irrigation projects.

The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his management/control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(d) Capitalization expenses;

(e) Acquisition expenses, and

(f) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

Payments

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures. Beginning 30 days after the due date interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt; a penalty charge of 6 percent per year will be charged on delinquent debts over 90 days old and will accrue from the date the debt became delinquent. No water shall be delivered to any farm unit until all irrigation charges have been paid. After 180 days a delinquent debt will be forwarded to the United States Treasury for further action in accordance with Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

Dated: September 4, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–24697 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management Alaska

[AK–962–1410–00-P]

Notice for Publication (AA–9260); Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for approximately 26.9 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 4 S., R. 98 W.,
Secs. 4 and 9.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh

Avenue, #13, Anchorage, Alaska 99513–7599 (907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 17, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–24631 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management Alaska

[AK–962–1410–00–P]

Notice for Publication (AA–9284); Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for approximately 0.95 acre. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 3 S., R. 102 W.,
Sec. 23

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, # 13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 17, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–24632 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–01–1310–00]

Gillette South Coalbed Methane Project, Campbell County, Wyoming; Availability of the Final Environmental Impact Statement (FEIS)

AGENCY: Bureau of Land Management, Interior

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Gillette South Coalbed Methane Project abbreviated (FEIS). Together with the Draft Environmental Impact Statement (DEIS) issued in March 1997, the FEIS analyzes the environmental consequences of coalbed methane development within the Gillette South assessment area. The development area is located in Campbell County and generally located within Townships 42 through 49 North; Ranges 70 through 73 West, 6th Principal Meridian. The area is accessed by U.S. Highway 59 south of Gillette, Wyoming. Access to the interior of the assessment area is provided by a road system developed to service prior and ongoing drilling and production activities.

DATES: Since the FEIS is abbreviated it must be reviewed with the DEIS. Comments on the FEIS will be accepted for 30 days following the date the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. The EPA notice is expected on or about September 5, 1997.

ADDRESSES: Comments on the FEIS should be sent to Mr. Richard Zander, Bureau of Land Management, Buffalo Resource Area, 1425 Fort Street, Buffalo, Wyoming 82834.

SUPPLEMENTARY INFORMATION: The DEIS issued in March 1997, received twelve comments. These comments were addressed and considered in the analysis of the FEIS. The FEIS analyzes a proposed action, and the no action alternative. It also considers four other alternatives, Restrict Timing of Approval of Federal Wells, Reduce Number of Federal Wells Approved, Change the Method of Surface Water Disposal, and Inject Produced Water Underground. The proposal presented by the operators is to continue to drill additional wells on their leased acreage within this methane gas development area.

Over the next 3 to 5 years, the operators propose to drill up to 400 (210 private or State and 190 Federal) additional wells to obtain maximum recovery of methane gas from existing Federal (41 percent), State, and private oil and gas leases. The FEIS describes the physical, biological, cultural, historic, and socioeconomic resources in and surrounding the project area. The focus of the impact analysis was based upon resource issues, concerns identified during public scoping, and the public and internal review comments received on the DEIS.

Dated: September 5, 1997.

Alan R. Pierson,

State Director.

[FR Doc. 97–24606 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1010–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management's Northwest (Ukiah) Resource Advisory Council will hold a business meeting and field tour Thursday and Friday, October 2 and 3, 1997 at the Mattole Lodge, located in the Mattole Valley, halfway between Petrolia and Honeydew, California. The Mattole Lodge is located on the Mattole River near AW Way County Park.

The meeting is open to the public. Agenda items include an update on BLM's Environmental Impact Statement for Livestock Grazing, a discussion on BLM's proposal to close 3.5 miles of beach in the King Range National Conservation Area to motorized use, an overview of the land exchange/acquisition program within BLM California, an update on a National Conservation Area proposal for the Sacramento River, a subcommittee report on recreation fees on public land facilities, updates from the Arcata, Clear Lake and Redding Resource Areas, and a State Office update on current issues.

The October 2 meeting begins at 10:30 a.m. at the fairground parking lot in

Ferndale, California. The Council will depart for a tour of public lands at the Mouth of Mattole Campground and Strawberry Rock grazing allotment. The tour is open to the public, but participants must provide their own transportation.

The Council will convene at the Mattole Lodge for the business meeting at 2:00 p.m. A public comment period is set for 3:30 p.m. Depending on the number of persons wishing to speak, a time limit could be imposed.

On October 3, the Council will reconvene at 8:00 a.m. at the Mattole Lodge to continue the business meeting.

FOR ADDITIONAL INFORMATION CONTACT: Lynda J. Roush, Arcata Resource Area Manager, 1695 Heindon Road, Arcata, CA 95521, phone (707) 825–2300.

Lynda J. Roush,

Arcata Area Manager.

[FR Doc. 97–24639 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of a currently approved collection (OMB Control Number 1010–0091).

SUMMARY: As required by the Paperwork Reduction Act of 1995 (Act), the Department of the Interior has submitted the collection of information discussed below to the Office of Management and Budget (OMB) for approval. The Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by October 17, 1997.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0091), 725 17th Street, NW, Washington, D.C. 20503.

Send a copy of your comments to the Minerals Management Service, Rules Processing Team, Mail Stop 4020, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the supporting statement and collection of information by contacting MMS's Information Collection Clearance Officer at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 254, Response Plans for Facilities Located Seaward of the Coast Line.

Abstract: The Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. To implement the provisions of these statutes, MMS published a final rule in the **Federal Register** on March 25, 1997 (62 FR 13991). These regulations require respondents to provide information and maintain records on their spill-response capability and efforts to prevent oil spills or prevent substantial threats of such discharges. The MMS uses the information to determine the overall effectiveness of owners/operators in preventing oil spills and their capability to respond in the event of an oil spill. Responses to this collection of information are mandatory. No confidential or sensitive information is collected.

Number and Description of Respondents: Approximately 193 owners and operators of facilities located in both State and Federal waters seaward of the coast line.

Frequency: The reporting and recordkeeping requirements and number of responses vary for each section and are mostly on occasion, but most will respond at least once per year (see chart below).

Estimated Annual Burden on Respondents: Reporting and recordkeeping ''hour'' burden of 47,439 hours (see charts below). We have identified no reporting and recordkeeping ''cost'' burdens.

BURDEN BREAKDOWN

Citation 30 CFR part 254	Reporting requirement	Annual frequency	Average number per year	Burden per reqmnt.	Annual burden hours
Subpart A:					
254.1(a) thru (d); 254.2(a), (c); 254.3; 254.4; 254.5; 254.7.	General requirements for submitting oil-spill response plans covered under subparts B & D.	Burden included with appropriate sections of part 254			0
254.1(e)	Request MMS jurisdiction over facility landward of coast line.	On occasion	2 requests	.5 hour	1
254.2(b)	Submit certification of capability to respond to worst case discharge or substantial threat of such.	On occasion	10 certifications	3 hours	30
254.8	Appeal MMS orders or decisions	Exempt as defined in 5 CFR 1320.3(h)(9)			0
Subpart B:					
254.20 thru 254.29	Submit new oil-spill response plan for OCS facilities.	On occasion	11 new plans	97 hours	1,067
254.3	Submit revised oil-spill response plan for OCS facilities.	On occasion; at least every 2 years.	154 revised plans	16.5 hours	2,541
Subpart C:					
254.42(f)	Inform MMS of the date of any exercise.	Triennial	224 notifications	1 hour	224
254.46(a)	Notify NRC of all oil spills from owner/operator facility.	Burden for this notification would be included in the NRC inventory			0

BURDEN BREAKDOWN—Continued

Citation 30 CFR part 254	Reporting requirement	Annual frequency	Average number per year	Burden per reqmnt.	Annual burden hours
254.46(b)	Notify MMS of oil spills of one barrel or more from owner/operator facility.	On occasion	45 notifications	1 hour	45
254.46(c)	Notify MMS & responsible party of oil spills from operations at another facility.	On occasion	20 notifications	1 hour	20
Subpart D:					
254.50	General section on oil-spill response requirements for facilities located in State waters seaward of the coast line.	Burden included with appropriate sections of part 254, subpart D			0
254.51	Submit response plan by modifying existing OCS plan.	One-time submission.	61 plans	45 hours	2,745
254.52	Submit response plan following format for OCS plan.	One-time submission.	11 plans	100 hours	1,100
254.53	Submit response plan developed under State requirements.	One-time submission.	11 plans	93 hours	1,023
254.54	Submit description of oil-spill prevention procedures.	On occasion	21 submissions	5 hours	105
Total Reporting			570 responses		8,901

Citation 30 CFR part 254	Recordkeeping requirement	Annual frequency	Average number per year	Burden per reqmnt.	Annual burden hours
Subpart C:					
254.41	Conduct annual training; retain training records for 2 years.	Annual	193 owners/operators	40 hours	7,720
254.42(a) thru (e)	Conduct triennial response plan exercise; retain exercise records for 3 years.	Triennial	217 exercises	110 hours	23,870
254.43	Inspect & maintain response equipment; retain inspection records for 2 years.	Monthly	193 inspections x 12 mos = 2,316.	3 hours	6,948
Total Recordkeeping					38,538

Form Number: N/A.

Comments: Section 3506 (c)(2)(A) of the Paperwork Reduction Act requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful, (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, (c) enhance the quality, utility, and clarity of the information to be collected, and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments within 30 days of publication of this notice.

Bureau Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: August 5, 1997.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 97–24626 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Programmatic Environmental Impact Statement/Environmental Impact Report on the CALFED Bay-Delta Program, San Francisco Bay/Sacramento-San Joaquin River Delta, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Amended supplemental notice of intent to prepare an environmental impact statement/environmental impact report.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) is issuing this amended supplemental notice of intent (NOI). The supplemental notice, published in the **Federal Register** at 62 FR 97–22895, August 28, 1997, expanded the scope of the Programmatic EIS/EIR to include the preparation of a Habitat Conservation Plan (HCP) as defined under Section 10 of the Federal Endangered Species Act (FESA) and satisfying the requirements of the California Endangered Species Act (CESA). The amended supplemental notice adds two additional scoping meetings and changes the date and location of another scoping meeting.

DATES: The date for submitting written public comments to CALFED on the options for structuring an HCP and the potential of granting assurances by way

of the HCP process remains October 20, 1997.

The following are changes/additions to scoping meetings published in the supplemental notice. Specific times and locations of these meetings will be sent to individuals, agencies, and organizations on the CALFED mailing list and will be published in local newspapers prior to the meeting dates.

- September 24, 1997 at the Orange County Airport Hilton in Irvine, California (changed from October 2, 1997 in Los Angeles);
- October 14, 1997 at the Berkeley Marina Marriott in Berkeley, California; and
- September 30, 1997 at the Los Banos Fairgrounds, Germino Building in Los Banos, California.

ADDRESSES: Written comments on the proposal to prepare an HCP for the CALFED Bay-Delta Program should be sent to Ms. Sharon Gross, CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento, California 95814.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Gross at the above address or call at the CALFED Bay-Delta Program Office at (916) 657–2666.

SUPPLEMENTARY INFORMATION: The CALFED Bay-Delta Program is a joint effort among State and Federal agencies with management and regulatory responsibilities in the Sacramento-San Joaquin River Bay-Delta system of California. The mission of the CALFED Bay-Delta Program is to develop a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system. The Program addresses four primary resource areas; ecosystem quality, water quality, water supply reliability, and system vulnerability.

The CALFED agencies are seeking comments on the development of an HCP for actions included as part of the CALFED Bay-Delta Program and comments on assurances provided in conjunction with an HCP, pursuant to the Department of the Interior's No Surprises Policy, which could be given to non-Federal participants.

Note: If special assistance is required, contact Ms. Pauline Nevins at least one week prior to each public meeting to enable CALFED to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available from TDD phones at 1–800–735–2929; from voice phones at 1–800–735–2922.

Dated: September 11, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–24638 Filed 9–16–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

President's Advisory Board on Race

ACTION: President's Advisory Board on Race; Notice of Meeting.

SUMMARY: The President's Advisory Board on Race will meet on September 30, 1997, at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, N.W., Washington, D.C. The meeting will start at 9:30 a.m. and end at approximately 3:30 p.m. Agenda items to be covered include: a presentation of demographic data regarding the population of the United States, a discussion of social science research about race and prejudice, and reports from the Chair and the Executive Director about recent activities and upcoming plans.

Expedited scheduling considerations for this meeting precluded the full notice period; however, timely advance notice is being provided to allow for appropriate public review and comment.

The meeting will be open to the public on a first-come, first-seated basis. Interested persons are encouraged to attend. Members of the public may submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, or facsimile, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any.

FOR FURTHER INFORMATION CONTACT: Comments or questions or regarding this meeting may be directed to Randy Ayers, (202) 395–1010, or via facsimile, (202) 395–1020.

Dated: September 12, 1997.

Randy D. Ayers,

Executive Officer.

[FR Doc. 97–24748 Filed 9–16–97; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Under C.F.R. § 50.7, notice is hereby given that on August 29, 1997, a proposed Consent Decree in *United States* v. *Waste Management of Kentucky, Inc., et al.*, Civil Action No: 90–0632–L(J), was lodged with the United States Court for the Western District of Kentucky. This Consent Decree will resolve our claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607, for response costs incurred and to be incurred by the United States at the Tri-City Industrial Disposal Site in Brooks, Bullitt County, Kentucky (Site).

The Consent Decree requires defendants Waste Management of Kentucky, LLC (successor to Waste Management of Kentucky, Inc.), Ford Motor Company, and the Dow Corning Corporation (Settling Defendants) to pay the United States $2,059,000 for past response costs incurred for the Site. The Settling Defendants are currently complying with a CERCLA Section 106 Unilateral Administrative Order (UAO) addressing the Remedial Design/Remedial Action (RD/RA) for the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Waste Management of Kentucky, Inc., et al.*, D.J. Ref. No. 90–11–2–515.

The Consent Decree may be examined at the Office of the United States Attorney, 510 West Broadway, Louisville, Kentucky; at U.S. EPA Region 4, 61 Forsythe Street, SE, Atlanta, Georgia; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C., (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker B. Smith,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–24596 Filed 9–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Reinstatement, without change, of a previously approved collection for which approval

has expired: Summary of Sentenced Population Movement—Annual Data Collection.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 17, 1997. This process is in accordance with the Paperwork Reduction Act of 1995. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Dr. Jan M. Chaiken, Director, Bureau of Justice Statistics, 810 Seventh St. NW, Washington, D.C. 20531. If you need a copy of the collection instrument with instructions, or have additional information, please contact James Stephan at (202) 616–3289, or via facsimile at 202–307–0128.

Overview of this information collection:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the Form/Collection:* Summary of Sentenced Population Movement, 1997.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Form: NPS–1. Corrections Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State Departments of Corrections. Others: The Federal Bureau of Prisons. Approximately 50 central reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates under their jurisdiction and in their custody will be asked to provide prison admission information for the following categories: new court commitments, parole violators, other conditional release violators returned, transfers from other jurisdictions, AWOLS and escapees returned, and returns from bond and appeal. Respondents will be asked to provide prison release information for the following categories: expiration of sentence, commutations, other conditional releases, probations, supervised mandatory releases, paroles, other conditional releases, deaths by cause, AWOLS, escapes, transfers to other jurisdictions, and releases to appeal and bond. In addition, respondents will be asked for data on jurisdictional and custody populations at yearend by gender for inmates with over 1 year maximum sentence, and inmates with a year or less maximum sentence; for information on the number of state inmates housed in facilities operated by a county or other local authority on December 31 to ease prison crowding; inmates on December 31 by race and Hispanic origin; testing of incoming inmates for HIV; and HIV infection and AIDS cases on December 31. The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 52 respondents each taking an average 6.5 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 338 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 12, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–24634 Filed 9–16–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of August, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,654; Webster Lens Co., Webster, MA

TA–W–33,541; Acme Belt Co., Inc., New York, NY

TA–W–33,678; Coval Corp., D.B.A. Mays-Marshall & Meier, Warwick, RI

TA–W–33,604; APV Crepaco, Div. of APV North America, Inc., Lake Mills, WI

TA–W–33,655; White Cap, Inc., Hayward, CA

TA–W–33,517 & A; Jackson Mills, Inc., Wellford, SC and New York, NY

TA–W–33,644; Gulton Graphics Instruments, East Greenwich, RI

TA–W–33,684; Memorex Telex Corp., Computer Products, Raleigh, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,566; Fleet Services Corp Div., of Fleet Financial Group Inc., Boston, MA

TA–W–33,639; Big A Finishing Service, New York, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,597; Zimmer, Inc., A Div. of Bristol Myers Squibb, Warsaw, IN

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–33,724; Dee Forest Products, Inc., Hood River, OR

TA–W–33,671; Zenith Data Systems Direct, A.K.A. Swan Technologies Corp, State College, PA

TA–W–33,551; William Wrigley Jr. Co., Santa Cruz, CA

TA–W–33,603; Eagle Engineering & Manufacturing, Inc., Welcome, MN

TA–W–33,658; ICI Paints North America Devoe Coatings Co., Pennauken, NJ

TA–W–33,504; ABL Engineering, Inc., Mentor, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,629; Richland Products, Inc., Lexington, OH

The subject firm transferred all production to another domestic facility during the relevant period. The subject firm experienced no sales, production or employment declines prior to the decision to relocate production domestically.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–33,435 & A; Pioneer Electronics Technology, Inc., Pomona, CA and Chico, CA: April 11, 1996.

TA–W–33,518; Yarnell Fabrics Corp., New York, NY: May 8, 1996.

TA–W–33,723; Acco USA, Inc., Swingline Div., Long Island City, NY: August 1, 1996.

TA–W–33,505; Levolor Home Fashions, Santa Monica, CA: May 7, 1996.

TA–W–33,659; Jennifer Dale., Inc., New York, NY: June 24, 1996.

TA–W–33,649; Impac Manufacturing, Inc., Cypress, CA: July 1, 1996.

TA–W–33,645; Northwestern Steel & Wire Co., Houston, TX: June 27, 1996.

TA–W–33,707; Action Apparel, Inc., Starkville, MS: July 21, 1996.

TA–W–33,660; Cozy Dozy, Inc., Bristol, TN: July 1, 1996.

TA–W–33,601; A.J. Apparel, Inc., Rocky Mount, NC: June 10, 1996.

TA–W–33,593; Lithonia Lighting, Conyers, GA: June 10, 1996.

TA–W–33,700; Oakmont Steel Inc., dba Edgewater Steel Co., Oakmont, PA: July 17, 1996.

TA–W–33,513; Levi Strauss and Co., Goodyear Cutting Facility, El Paso, TX: & Operating in the following locations: A; Pellicano Finishing Facility, El Paso, TX, B; Lomaland Plant, El Paso, TX, C; Eastside Plant, El Paso, TX, D; Cypress Plant, El Paso, TX, E; Airway Plant, El Paso, TX, F; Amarillo Finishing Plant, Amarilo, TX, G; Brownsville Plant, Brownsville, TX, H; Harlingen Plant, Harlingen, TX, I; San Angelo Plant, San Angelo, TX, J; San Antonio Plant, San Antonio, TX, K; San Francisco Plant, San Francisco, CA, L; Blue Ridge Plant, Blue Ridge, GA, M; Valdosta Plant, Valdosta, GA, N; Rosell Plant, Roswell, NM, O; Albuquerque Plant, Albuquerque, NM, P; Centerville Plant, Centerville, TN, Q; Knoxville Sewing Plant, Knoxville, TN, R; Knoxville Finishing Plant, Knoxville, TN, S; Mountain City Plant, Mountain City, TN, T; Powell Plant, Powell, TN, U; Warsaw Plant, Warsaw, VA, V; San Antonio Plant, San Antonio, TX: May 13, 1996.

TA–W–33,554; Christina J. Manufacturing, Inc., New York, NY: May 23, 1996.

TA–W–33,577; North Safety Products, Rockford, IL: June 5, 1996.

TA–W–33,690 & A; Bemis Co., Inc., Memphis, TN and Pepperell, MA: July 11, 1996.

TA–W–33,676; Federal Mogul Corp., Leiters Ford, IN: July 9, 1996.

TA–W–33,602; Sweatt's Prefade, Inc., Opp, AL: May 5, 1996.

TA–W–33,702; Western Publishing Co., Inc., Fayetteville, NC: July 17, 1996.

TA–W–33,558; Angelica Image Apparel, Summersville, MO: May 27, 1996.

TA–W–33,712; Thomas & Betts Corp., Mercer, PA: July 22, 1996.

TA–W–33,561; Stabilus, Colmar, PA: May 23, 1996.

TA–W–33,661; Louisiana Pacific Corp., Dungannon, VA: July 30, 1996.

TA–W–33,730; Appalachian Corp., Monterey, TN: July 29, 1996.

TA–W–33,682; Rockwell Automation, Allen-Bradley Div., Rhinelander, WI: July 15, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of August, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01815; Jostens Photography, Inc., Webster, NY

NAFTA–TAA–01717; R.R. Taylor Farms, Inc., Hobb Sound, FL

NAFTA–TAA–01741; Zimmer, Inc., A Div., of Bristol Myers Squibb, Warsaw, IN

NAFTA–TAA–01800; Zenith Data Systems Direct, A.K.A. Swan Technologies Corp., State College, PA

NAFTA–TAA–01830; Industrial Systems Associates, Inc., Tucson, AZ

NAFTA–TAA–01753; AG Labors, Inc., Clewiston, FL
NAFTA–TAA–01828; Memorex Telex Corp., Computer Products, Raleigh, NC
NAFTA–TAA–01768; Cane Tech, Inc., Clewiston, FL
NAFTA–TAA–01824; Rockwell Automation, Allen-Bradley Div., Rhinelander, WI
NAFTA–TAA–01811; White Cap, Inc., Hayward, CA
NAFTA–TAA–01675; William Srigley Jr. Company, Santa Cruz, CA
NAFTA–TAA–01730; Domi AGR, Inc., Belle Glade, FL
NAFTA–TAA–01653; Johnston Industries, Inc., Wellington Sears Div., Tarboro, NC
NAFTA–TAA–01762; B&J Sheffield Harvesting, Inc., Loxahatchee, FL
NAFTA–TAA–01711; Lionel Beaver, Moore Haven, FL
NAFTA–TAA–01704; APV Crepaco, Div. of APV North America, Inc., Lake Mills, WI
NAFTA–TAA–01723; Alger Farms, Homestead, FL

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01855; CMS Nomeco Oil and Gas Co., Jackson, MI

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–01852; Dee Forest Products, Inc., Hood River, OR

A significant number of proportions of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision) have not become totally or partially separated from employment.

Affirmative Determination NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01734; A.J. Apparel, Inc., Rocky Mount, NC: May 26, 1996.
NAFTA–TAA–01688; Hearth Technologies/Heat-N-Glo Div., Savage, MN: June 5, 1996.
NAFTA–TAA–01819 & A; Bemis Company, Inc., Cordova, TN and Pepperell, MA: June 30, 1996.
NAFTA–TAA–01845; Thomas & Betts Corp., Mercer, PA: July 22, 1996.
NAFTA–TAA–01858; Caparo Steel Co., Farrell, PA: August 1, 1996.
NAFTA–TAA–01737; Georgia-Pacific, Pearson, GA: June 5, 1996.
NAFTA–TAA–01692; J.R. Simplot Co., Food Div-Grand Rapids Plant, Wyoming, MI: May 12, 1996.
NAFTA–TAA–01687; Angelica Image Apparel, Summersville, MO: May 27, 1996.
NAFTA–TAA–01879; Toy Biz, Inc., Colorforms, Ramsey, NY: August 15, 1996.
NAFTA–TAA–01862; Louisiana Pacific Corp., Dungannon, VA: June 30, 1996.
NAFTA–TAA–01788; Allegiance Healthcare, Inc., Riverside, CA & Temporary Workers of VIP Temporary Services, Ontario, CA: June 16, 1996.
NAFTA–TAA–01808; BASF Corp., Holyoke, MA: June 25, 1996.
NAFTA–TAA–01801; Kimberly-Clark Corp., Winslow Plant, Winslow, ME: July 7, 1996.
NAFTA–TAA–01856; Pro-Tech Respirators, Inc., Div. of Bason USA, Buchanan, MI: August 6, 1996.
NAFTA–TAA–01805 & A; Connie Casuals Limited, Bangor, PA and Pen Argyl, PA: July 3, 1996.
NAFTA–TAA–01698; Nu-Kote Internatinoal, Inc., Ribbon Div., Rochester, NY: May 22, 1996.
NAFTA–TAA–01807; Levi Strauss and Co., Goodyear Cutting Facility, El Paso, TX: & Operating in the following locations: A; Pellicano Finishing Facility, El Paso, TX, B; Lomaland Plant, El Paso, TX, C; Eastside Plant, El Paso, TX, D; Cypress Plant, El Paso, TX, E; Airway Plant, El Paso, TX, F; Amarillo Finishing Plant, Amarilo, TX, G; Brownsville Plant, Brownsville, TX, H; Harlingen Plant, Harlingen, TX, I; San Angelo Plant, San Angelo, TX, J; San Antonio Plant, San Antonio, TX, K; San Francisco Plant, San Francisco, CA, L; Blue Ridge Plant, Blue Ridge, GA, M; Valdosta Plant, Valdosta, GA, N; Rosell Plant, Roswell, NM, O; Albuquerque Plant, Albuquerque, NM, P; Centerville Plant, Centerville, TN, O; Knoxville Sewing Plant, Knoxville, TN, R; Knoxville Finishing Plant, Knoxville, TN, S; Mountain City Plant, Mountain City, TN, T; Powell Plant, Powell, TN, U; Warsaw Plant, Warsaw, VA, V; San Antonio Plant, San Antonio, TX: July 9, 1996.
NAFTA–TAA–01794; Williamson Products, Lawrenceville, PA: June 18, 1996.
NAFTA–TAA–01813; Magnetek, Inc., Huntington, IN: July 2, 1996.
NAFTA–TAA–01831; Precision Rotary Instruments, Bridgewater Corners, VT: July 9, 1996.
NAFTA–TAA–01846; Basler Elecric, Pharr, TX: August 1, 1996.
NAFTA–TAA–01796; Impac Manufacturing, Inc., Cypress, CA: June 30, 1996.
NAFTA–TAA–01820; ACCO USA, Inc., Swingline Div., Long Island City, NY: July 10, 1996.

I hereby certify that the aforementioned determinations were issued during the month of August, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 4, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–24661 Filed 9–16–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,327]

BJ Services Company, U.S.A., Including Former Employees of Western Company of North America, A/K/A Western Oceanic Services, Inc., A/K/A Nowsco Well Services Inc., Headquartered in Houston, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 13, 1995, applicable to workers of BJ Services Company, U.S.A., headquartered in Houston, Texas. The notice was published in the **Federal Register** on October 27, 1995 (60 FR 55064). The certification was amended on January 22, 1996 to include workers whose wages were reported under the predecessor tax accounts of Western Company of North America and Western Oceanic Services, Inc. The notice of amendment was published in the **Federal Register** on February 9, 1996 (61 JR 5034).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The

workers are engaged in employment related to the production of crude oil and natural gas. Findings on review show that some of the workers have had their wages reported to the separate Unemployment Insurance tax account for Nowsco Well Services Inc. The intent of the Department's certification is to include all workers of BJ Services Company, U.S.A. who were affected by increased imports. Accordingly, the Department is amending the worker certification to reflect this matter.

The amended notice applicable to TA–W–31,327 is hereby issued as follows:

All workers of BJ Services Company, U.S.A., including former employees of Western Company of North America, also known as Western Oceanic Services, Inc., also known as Nowsco Well Services Inc., headquartered in Houston, Texas, who became totally or partially separated from employment on or after August 3, 1994 through October 13, 1997, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of August 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–24658 Filed 9–16 –97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,850, TA–W–32,850A and TA–W–32,850B]

Craddock-Terry, Incorporated (Farmville Plant) Farmville, Virginia, (Gretna Plant) Gretna, Virginia, and Lynchburg Headquarters, Lynchburg, Virginia; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 24, 1997, applicable to all workers of Craddock-Terry, Incorporated, Farmville Plant, located in Farmville, Virginia. The notice was published in the Federal Register on February 13, 1997 (62 FR 6804).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at the Gretna Plant, Gretna, Virginia facility when it closed August 15, 1997. The company also reported that worker separations will occur in September 1997 at the Lynchburg Headquarters, Lynchburg, Virginia location. The Lynchburg Headquarters provides support function services to the subject firm's manufacturing plants located throughout Virginia. The workers are engaged in the production of men's and women's shoes.

The intent of the Department's certification is to include all workers of Craddock-Terry, Incorporated who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Craddock-Terry, Incorporated, Gretna Plant, Gretna, Virginia and the Lynchburg Headquarters, Lynchburg, Virginia.

The amended notice applicable to TA–W–32,850 is hereby issued as follows:

All workers of Craddock-Terry, Incorporated, Farmville Plant, Farmville, Virginia (TA–W–32,850), Gretna Plant, Gretna, Virginia (TA–W–32,850A) and the Lynchburg Headquarters, Lynchburg, Virginia (TA–W–32,850B) who became totally or partially separated from employment on or after October 16, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 29th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–24667 Filed 9–16–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,943 and TA–W–31,943E]

Doran Textiles, Incorporated; Shelby, North Carolina and Fox-Wells Sales Division, New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 8, 1996, applicable to all workers of Doran Textiles, Incorporated, located in Shelby, North Carolina. The notice was published in the **Federal Register** on May 24, 1996 (61 FR 26219).

At the request of the company and State agency, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at the Fox-Well Sales Division, New York, New York location of Doran Textiles, Incorporated. The Fox-Well Sales Division provides support function services, sales, marketing and designing for Doran's production facilities located throughout North Carolina and South Carolina. The workers produce woven apparel, decorative and industrial fabrics, spun novelty yarn, fashion yarn and dye yarn.

The intent of the Department's certification is to include all workers of Doran Textiles, Incorporated, Inc. who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Doran Textiles, Incorporated, Fox-Wells sales Division, New York, New York.

The amended notice applicable to TA–W–31,943 is hereby issued as follows:

All workers of Doran Textiles, Incorporated, Shelby, North Carolina (TA–W–31,943), and Fox-Wells Sales Division, New York, New York (TA–W–31,943E) who became totally or partially separated from employment on or after January 18, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 29th day of August 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–24659 Filed 9–16–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 29, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 29, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 8/18/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,729	Schmid Laboratories (Wkrs)	Anderson, SC	07/30/97	Latex Condoms.
33,730	Appalachian Corporation (Wkrs)	Monterey, TN	07/29/97	Sleepwear.
33,731	Trina Inc. (Wkrs)	Fall River, MA	07/31/97	Cosmetic Accessories/Travel Bags.
33,732	Paragon Electric Co. (IBEW)	Two Rivers, WI	07/30/97	Defrost Timers.
33,733	Beth Ship (IAMAW)	Sparrows Point, MD	08/05/97	Provides Ship Repair Services.
33,734	Target Components (Wkrs)	Kenwood, MI	08/05/97	Fuel Filler Doors.
33,735	Monarch Machine Tool (IAMAW)	Sidney, OH	07/31/97	Manual and CNC Turning Machines.
33,736	Bassett Furniture (Co)	Statesville, NC	08/06/97	Baby Cribs, Rocking Chairs & Dressers.
33,737	Klein Bicycle Corp. (Wkrs)	Chehalis, WA	08/05/97	Bicycle Corp.
33,738	Diamond Multimedia Sys. (Wkrs)	Tangent, OR	08/04/97	Modems.
33,739	Tsmura International (Wkrs)	North Bergen, NJ	06/23/97	General and Individual Packaging Items.
33,740	Stein Steel Mill Serv. (USWA)	Bradview Height, PA	08/06/97	Provides Service for Steel Coils.
33,741	Bel Cheese USA (Co.)	Leitchfield, KY	08/01/97	Natural, Cheddar & Processes Cheeses.
33,742	Dana Corp. Spicer Trailer (Co.)	Berwick, PA	08/07/97	Leaf Springs for Trucks.
33,743	Caparo Steel Co. (USWA)	Farrell, PA	08/01/97	Slab Steel.
33,744	Creamette Co. (IBWT)	New Hope, MN	08/05/97	Pasta Products.
33,745	Pro-Tech Respirators (Wkrs)	Buchanan, MI	08/05/97	Industrial Respirators.
33,746	Pathmark Stores (JFCW)	Woodbridge, NJ	05/27/97	Supermarket Services.
33,747	Stuffed Shirt Inc. (Co.)	Slidell, LA	07/24/97	Denim Jeans, Pants, Skirts.
33,748	United Technologies Auto. (Wkrs)	Plymouth, IN	07/30/97	Wiring Harnesses.
33,749	U.S. Can Co. (IAMAW)	Racine, WI	08/05/97	Aerosol and Cans.
33,750	Emerson Electric (Wkrs)	Rogers, AR	08/06/97	Fractional Horsepower Motors.
33,751	Malone Manufacturing (Wkrs)	Malone, NY	08/07/97	Die-Cut into Tee-Shirt Components.
33,752	Clark Metal Products (Wkrs)	Marion, OH	08/08/97	Metal Stampings for Autos & Appliances.
33,753	Borg Warner Automotive (Wkrs)	Blytheville, AR	07/21/97	Transmission Solenoids.

[FR Doc. 97–24660 Filed 9–16–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—01877]

Milaca Mills, Incorporated, Milaca, MN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on August 18, 1997 in response to a petition filed on behalf of workers at Milaca Mills, Incorporated, Milaca, MN.

This case is being terminated because the workers were separated from the subject firm more than one year prior to the date of the petition. The NAFTA Implementation Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 28th day of August 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–24666 Filed 9–16–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182) hereinafter called (NAFA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Acting Director of OTAA not later than September 22, 1997.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than September 22, 1997.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 27th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

August 22, 1997.

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Port Clyde Canning (Co.)	Rockland, ME	07/18/97	NAFTA–1,833	Sardines.
Manpower Temporary Services (Wkrs)	Waynesville, NC	07/24/97	NAFTA–1,834	Automotive hose, timing belts.
J.G. Furniture Group (USWA)	Quakertown, PA	07/25/97	NAFTA–1,835	Desks.
McCrocy Corporation (Wrks)	York, PA	07/15/97	NAFTA–1,836	Retail and distribution center.
Varity Dayton Walther (USWA)	Portsmouth, OH	07/24/97	NAFTA–1,837	Brake drums.
Lucas Varity Kelsey–Hayes (UAW)	Brighton, MI	07/21/97	NAFTA–1,838	S and T 4WAL sensors.
Ithaca Industries (Co.)	Robbins, NC	07/02/97	NAFTA–1,839	Women's hosiery.
Brandon Apparel Group (Wkrs)	Colombus, WI	07/25/97	NAFTA–1,840	Children's sports apparel.
Norton Company (UPIU)	Troy, NY	07/24/97	NAFTA–1,841	Paper.
Delong Sportswear (Wkrs)	Olney, TX	07/28/97	NAFTA–1,842	Sportswear.
Eveready Battery (Wkrs)	Fremont, OH	07/23/97	NAFTA–1,843	Batteries.
Willametta Industries (WCIW)	Albany, OR	07/25/97	NAFTA–1,844	Laminated veneer lumber.
Thomas and Betts (USWA)	Mercer, PA	07/29/97	NAFTA–1,845	Unit heaters.
Basler Electric (Co.)	Pharr, TX	08/01/97	NAFTA–1,846	High frequency transformers.
Northwest Agricultural (IBT)	Ontario, OR	07/28/97	NAFTA–1,847	Frozen potatoes.
Greco (Co.)	Pugallup, WA	07/25/97	NAFTA–1,848	Homes and sunrooms.
Paragon Electric (IBEW)	Two Rivers, WI	08/01/97	NAFTA–1,849	Timers and time switches.
Stuffed Shirt (Co.)	Slidell, LA	08/04/97	NAFTA–1,850	Womens apparel.
Alliant Techsystems (Wkrs)	Radford, VA	06/30/97	NAFTA–1,851	Propellant.
Dee Forest Products (Co.)	Hood River, OR	08/04/97	NAFTA–1,852	Wet process hardboard.
Rayloc (Wkrs)	Atlanta, GA	08/05/97	NAFTA–1,853	
Tuscarora (Co.)	Martinsville, IN	08/04/97	NAFTA–1,854	Electronics.
CMS Nomeco Oil & Gas (Wkrs)	Jackson, MI	07/31/97	NAFTA–1,855	Crude oil and natural gas.
Pro-Tech Respirators (Wkrs)	Buchanan, MI	08/06/97	NAFTA–1,856	Respirators, cartridges, filters.
Onan (Co.)	Huntsville, AL	08/06/97	NAFTA–1,857	Gasoline engine technology.
Caparo Steel (Wkrs)	Farrell, PA	08/06/97	NAFTA–1,858	Slab steel.
Stanwood Mills (UNITE)	Slatington, PA	08/05/97	NAFTA–1,859	Fabric formation/weavers.
Diamond Multimedia (Wkrs)	Tangent, OR	08/08/97	NAFTA–1,860	Computer modems.
Thermal Engineering International (Wkrs).	Pittsburg, KS	07/31/97	NAFTA–1,861	Feedwater heaters.
Louisiana Pacific (CJA)	Dungannon, VA	07/08/97	NAFTA–1,862	Oriented strand board.
U.S. Can (IAMAW)	Racine, WI	08/01/97	NAFTA–1,863	Cans.
Chase Packaging (Co.)	Portland, OR	08/11/97	NAFTA–1,864	Woven fabric.
SSF Building Materials (Co.)	Northport, WA	08/11/97	NAFTA–1,865	Lumber.
Dana Corp.—Spicer Trailer Products (UAW).	Berwick, PA	08/12/97	NAFTA–1,866	Leaf springs.
International Titanium (USWA)	Cedartown, GA	08/12/97	NAFTA–1,867	Steel.
Kaiser Alumiunm (UAW)	Erie, PA	08/12/97	NAFTA–1,868	Forgings.
Brandt, Inc (Wkrs)	Watertown, WI	08/13/97	NAFTA–1,869	Currency courting and sorting machines.
Editorial America (Wkrs)	Virginia Gardens, FL	08/13/97	NAFTA–1,870	Magazines.
Hasser Enterprises (Co.)	Lafayette, IN	08/13/97	NAFTA–1,871	Metal stampings.
Philips Electronic North America (Co.)	Jupiter, FL	08/13/97	NAFTA–1,872	Electronics.
Anglo Fabrics (Co.)	Webster, MA	08/06/97	NAFTA–1,873	Woolen coated fabrics for women apparel.
Wyeth Ayerst Laboratories (Co.)	Bound Brook, NJ	08/15/97	NAFTA–1,874	Methasolamide bulk.
Appleton Papers (UPW)	Newton Falls, NY	08/15/97	NAFTA–1,875	Coated fine paper.
Eddie Mowad (Wkrs)	El Paso, TX	08/08/97	NAFTA–1,876	Jackets.
Milaca Mills (UNITE)	Milaca, MN	08/18/97	NAFTA–1,877	Sleep shirts.
Pennsylvania Steel Technologies (USWA).	Steelton, PA	08/18/97	NAFTA–1,878	Oil & gas transmission line piper.
Colorforms (Wkrs)	Ramsey, NY	08/18/97	NAFTA–1,879	Toys.
Amex Apparel (Wkrs)	El Paso, TX	08/19/97	NAFTA–1,880	Clothing, shirts, underwear.
Martin Mills (Co.)	St. Martinville, LA	08/18/97	NAFTA–1,881	Underwear.
Target Components (Wkrs)	Kentwood, MI	08/07/97	NAFTA–1,882	Auto parts.
Bassett Furniture Industries (Co.)	Statesville, NC	08/12/97	NAFTA–1,883	Solid wood baby beds.

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Versa Technologies (Co.)	Wausau, WI	08/18/97	NAFTA–1,884	Silicone rubber products.
Ramsay Fabrics (Co.)	New York, NY	08/20/97	NAFTA–1,885	Fabrics.
SL Auburn (UPIU)	Auburn, NY	08/20/97	NAFTA–1,886	Industrial igniters.
Reeves Brothers (Co.)	Spartanburg, SC	08/21/97	NAFTA–1,887	Apparel cloth.
Appalachian Finishing Works (Co.)	Knoxville, TN	08/21/97	NAFTA–1,888	Dyeing and finishing of knit.
Shure Brothers (Co.)	Douglas, AZ	08/22/97	NAFTA–1,889	Audio Components, micropones.
Noma Appliance and Electronics (Co.)	Nogales, AZ	08/20/97	NAFTA–1,890	Appliance, electronics.
Pridecraft Enterprises (Co.)	Forsyth, GA	08/26/97	NAFTA–1,891	Operating room clothing.
Pridecraft Enterprises	Georgiana, LA	08/26/97	NAFTA–1,892	Health care textile products.
Conway Winter (Wkrs)	Birch Tree, MO	08/25/97	NAFTA–1,893	Children shoes.
Jostens (Wkrs)	Princeton, IL	08/25/97	NAFTA–1,894	Rings.
Chrysler (Co.)	Belvidere, IL	08/25/97	NAFTA–1,895	Automobiles.
Electrohome (Co.)	Carthage, MO	08/26/97	NAFTA–1,8 96	Printed wiring boards.
SMS Textile Mills (Wkrs)	Norwich, CT	08/26/97	NAFTA–1,897	Elastic fabrics.

[FR Doc. 97–24665 Filed 9–16–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01476 and NAFTA–1476A]

Sun Apparel, Incorporated, NAFTA–01476 (Concepcion Plant) El Paso, Texas and NAFTA–1476A (Armour Plant) El Paso, Texas; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on March 21, 1997, applicable to all workers of Sun Apparel, Incorporated, Concepcion Plant in El Paso, Texas. The notice was published in the **Federal Register** on March 31, 1997 (62 FR 15200).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the State agency reveals that Sun Apparel has had worker separations at the Armour plant, El Paso, Texas, which is a sewing facility for the men's and women's jeans produced by the subject firm. Based on this information, the Department is amending the certification to include workers of the Armour plant of Sun Apparel in El Paso.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of jeans from Mexico.

The amended notice applicable to NAFTA–01476 is hereby issued as follows:

All workers of Sun Apparel, Incorporated, Concepcion Plant (NAFTA–01476) and Armour Plant (NAFTA–1476A), El Paso, Texas, who became totally or partially separated from employment on or after March 10, 1997, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of August 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–24657 Filed 9–16–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Studying the Merits of Defined Contribution vs. Defined Benefit Plans; Advisory Council on Employee Welfare and Pension Benefits Plans Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group established to Study the Merits of Defined Contribution vs. Defined Benefit Plans With an Emphasis on Small Business Concerns will hold a public meeting on October 7, 1997 in Room N–5437 A&B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210. There will be no full Council meeting in October.

The purpose of the open meeting, which will run from 9:30 a.m. until approximately noon, is for Working Group members to begin drafting its final report and recommendations to the Secretary of Labor on the issue, particularly as to the formation of defined benefit plans for small businesses.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before September 30, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Studying the Merits of Defined Contribution vs. Defined Contribution Plans With an Emphasis on Small Business Concerns should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 30, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 30.

Signed at Washington, D.C. this 11th day of September, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–24662 Filed 9–16–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Employer Assets In ERISA Employer-Sponsored Plans; Advisory Council on Employee Welfare and Pension Benefit Plans Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on October 7, 1997 of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group studying Employer Assets in ERISA Employer-Sponsored Plans. There will be no full Council meeting in October.

The purpose of the open meeting, which will run from 1:00 p.m. until approximately 3:30 p.m. in Room N–5437 A&B, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, D.C. 20210, is for Working Group members to begin drafting their report on employer assets in ERISA employer-sponsored plans.

Members of the public are encouraged to file a written statement pertaining to the working group's topic by submitting 20 copies on or before September 30, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives or organizations wishing to address the Working Group on employer Assets in ERISA Employer-Sponsored Plans should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 30, 1997, at the address indicated in this notice. Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 30.

Signed at Washington, D.C. this 11th day of September, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–24663 Filed 9–16–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Soft Dollar Arrangements and Commission Recapture; Advisory Council on Employee Welfare and Pension Benefits Plans Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held October 8, 1997 of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group formed to study Soft Dollar Arrangements and Commission Recapture. There will be no full Council meeting in October.

The session will take place in Room N–5437 A&B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for working group members to begin drafting their final report and recommendations for the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to the specific topic by submitting 20 copies on or before September 30, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Soft Dollar Arrangements and Commission Recapture should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 30, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 30.

Signed at Washington, D.C. this 11th day of September, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–24664 Filed 9–16–97; 8:45 am]

BILLING CODE 4510–29–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 97–2 CARP CD 95]

Ascertainment of Controversy for 1995 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected for secondary transmission by cable systems in 1995 to submit comments as to whether a Phase I or a Phase II controversy exists as to the distribution of these funds.

DATES: Comments are due October 17, 1997.

ADDRESSES: If sent by mail, an original and five copies of written comments and a Notice of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand-delivered, an original and five copies of written comments and a Notice of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Each year, cable systems submit royalties to the U.S. Copyright Office under a statutory license which allows cable systems to retransmit broadcast signals to their subscribers. 17 U.S.C. 111. These royalties are, in turn, distributed in one of two ways to copyright owners whose work was included in a cable system's secondary transmission of these signals and who filed timely a claim with the Copyright Office. The copyright owners may either negotiate a settlement agreement amongst themselves as to the distribution of the royalty fees, or the

Librarian of Congress may convene an *ad hoc* Copyright Arbitration Royalty Panel (CARP) to determine the distribution of the royalty fees which remain in controversy. See 17 U.S.C. chapter 8.

Before commencing a distribution proceeding, however, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the funds. 17 U.S.C. 803(c). Therefore, the Copyright Office is requesting comment on the existence of any controversies as to the distribution of the 1995 cable royalties.

The Office also requests that those claimants intending to participate in the 1995 distribution proceeding file a Notice of Intent to Participate, noting whether they anticipate participating in a Phase I proceeding, a Phase II proceeding, or both. Failure to file a timely Notice of Intent to Participate shall preclude a party from participating in this proceeding.

In a Phase I proceeding, the arbitrators ascertain the distribution of royalties among the categories of broadcast programming represented in the proceeding, and in a Phase II proceeding, the arbitrators settle disputes between claimants within a particular category concerning the distribution of royalty fees within the group. If a claimant anticipates a Phase II controversy, the claimant must state each program category in which he or she has an interest which by the end of the comment period has not yet been satisfied by private agreement.

Participants must advise the Office of the existence of all controversies, Phase I or Phase II, by the end of the comment period. The Office will not consider controversies which come to its attention after the close of the comment period.

Dated: September 12, 1997.

Nanette Petruzzelli,

Acting General Counsel.

[FR Doc. 97–24653 Filed 9–16–97; 8:45 am]

BILLING CODE 1410–33–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, 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)(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 National Endowment for the Arts in soliciting comments concerning the proposed information collection request of: generic approval for customer satisfaction surveys and focus groups. A copy of the collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before November 13, 1997. The National Endowment for the Arts 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 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 the electronic submissions of responses.

ADDRESSES: Laurence M. Baden, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 628, Washington, DC 20506–0001, telephone (202) 682–5408 (this is not a toll-free number), fax (202) 682–5798.

Murray Welsh,

Director, Administrative Services.

[FR Doc. 97–24583 Filed 9–16–97; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel (Multidisciplinary Section) Meeting

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, Multidisciplinary Section (Creation & Presentation category) to the National Council on the Arts will be held on October 20–21, 1997. The panel will meet from 8:30 a.m. to 7:00 p.m. on October 20 and from 8:30 .am. to 5:00 p.m. on October 21, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506. A portion of this meeting, from 1:15 p.m. to 2:30 p.m. on October 21, will be open to the public for a policy discussion of guidelines, planning, Leadership Initiatives, and field needs and trends.

The remaining portions of this meeting, from 8:30 a.m. to 7:00 p.m. on October 20 and from 8:30 a.m. to 1:15 p.m. and 2:30 p.m. to 5:00 p.m. on October 21, 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, N.W., 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: September 11, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–24609 Filed 9–16–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel (Music Section 2) Meeting

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, Music Section 2 (Creation & Presentation category) to the National Council on the Arts will be held on November 17–20, 1997. The panel will meet from 10:00 a.m. to 6:00 p.m. on November 17; from 9:00 a.m. to 6:00 p.m. on November 18; from 9:00 a.m. to 4:30 p.m. on November 19; and from 9:00 a.m. to 12:00 p.m. on November 20, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506. A portion of this meeting, from 2:30 p.m. to 4:30 p.m. on November 19, will be open to the pubic for a policy discussion of guidelines, planning, Leadership Initiatives, Millennium projects, and field needs and trends.

The remaining portions of this meeting, from 10:00 a.m. to 6:00 p.m. on November 17; from 99:00 a.m. to 6:00 p.m. on November 18; from 9:00 a.m. to 2:30 p.m. on November 19; and from 9:00 a.m. to 12:00 p.m. on November 20, 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, N.W., 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: September 11, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–24610 Filed 9–16–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel (Opera Section) Meeting

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, Opera Section (Creation & Presentation category) to the National Council on the Arts will be held on October 7–8, 1997. The panel will meet from 9:00 a.m. to 6:00 p.m. on October 7, 1997 and from 9:00 a.m. to 5:30 p.m. on October 8, 1997 in Room 730 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 3:00 p.m. on Wednesday, October 8 will be open to the public for a policy discussion of guidelines, planning, Leadership Initiatives, Millennium projects, and field needs and trends.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on October 7 and from 9:00 a.m. to 1:30 p.m. and 3:00 p.m. to 5:30 p.m. on October 8, 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 confidences 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 Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., 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: September 11, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–24611 Filed 9–16–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross Disciplinary Activities; 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 Cross Disciplinary Activities (1193).

Date and Time: September 29, 1997; 8:30 to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Rooms 1120, 1105.1, 1105.17.

Contact Persons(s): Rita Rodriguez, Program Director, CISE/OCDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Telephone: (703) 306–1980.

Type Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Research Instrumentation 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.

Reason for Late Notice: Committee Management Officer oversight.

Dated: September 11, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–24603 Filed 9–16–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Committee of Visitors: 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: Advisory Committee for Geosciences; Committee of Visitors (1755).

Date and Time: October 1 and 2, 1997 8:30 AM–5:00 PM each day.

Place: Room 730, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Donald Heinrichs, Head, Oceanographic Centers & Facilities Section, Division of Ocean Sciences; Room 725; 4201 Wilson Blvd., Arlington, VA 22230; telephone: (703) 306–1576.

Purpose of Meeting: To carry out a Committee of Visitors' (COV) review, including examination of decision on proposals, reviewer comments, and other privileged materials.

Agenda: Review activities of the Oceanographic Centers and Facilities Section.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if disclosed. If discussions were open to the public, these matters that are exempted under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: September 11, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–24605 Filed 9–16–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; 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 in Mathematical Sciences (1204).

Date and Time: September 24–25, 1997; 8:30 a.m. until 5:00 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Alvin I. Thaler, Program Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Group Infrastructure Grants Program 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 and financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552B(C) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in arranging an acceptable meeting date for the panelists.

Dated: September 11, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–24602 Filed 9–16–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period October 1 through 22, 1997, the Special Emphasis Panel in Networking & Communications Research & Infrastructure (1207) will be holding panel meetings to review and evaluate research proposals. The dates and types of proposals being reviewed are:

Dates of meetings	Types of proposal
10/1/97	K12.
10/6/97–	College.
10/7/97	
10/15/97–	High Performance.
10/16/97	
10/21/97–	High Performance.
10/22/97	

Times: 8:30 to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Contact Person: Douglas Gatchell, Program Director, Division of Networking & Communications Research & Infrastructure, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, telephone (703) 306–1949.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the connections to the Internet Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 11, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–24604 Filed 9–16–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–71 and DPR–62 issued to the Carolina Power & Light Company (the licensee) for operation of the Brunswick Steam Electric Plant, Units 1 and 2 (BSEP) located in Southport, North Carolina.

In an application dated August 6, 1997, as supplemented on August 26, 1997, the licensee proposed license amendments addressing an unreviewed safety question associated with handling of the spent fuel shipping cask at the BSEP. In a letter to the NRC dated November 16, 1982, the licensee characterized the cask lift rigging as having a redundant design. More recently, while responding to NRC questions related to NRC Bulletin 96–02, ''Movement of Heavy Loads Over Spent Fuel,'' the licensee determined that site procedures allow lifting and loading of a IF–300 spent fuel shipping cask with only the primary yoke (a configuration that is not single-failure proof) during transfer from the tilting cradle to the secondary yoke. The cask is transported on a railway car in a horizontal position. After inspection and removal of any crash structure and tie-downs, the valve box covers are removed and the cask is raised to a vertical position using the primary yoke (which is non-redundant). The primary yoke is used to lift the cask from the tilting cradle and place it in the secondary yoke which is also on the railway car. Once the secondary yoke is engaged, the lifting device has redundant lifting capability. Similarly, after the cask is returned to the railway car, only the primary yoke is used in returning the cask from the vertical to

the horizontal position. The licensee concluded that the portion of the cask handling evolution where only the primary yoke is employed has not been reviewed by the NRC.

The licensee performed an analysis which considers the design, testing, and inspections of the primary yoke and concluded that there is high confidence that the primary yoke will not fail.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Originally, a cask drop was not deemed a credible accident because the cask redundant lifting yoke is of redundant design and the crane on which it is used is single failure proof. Although a non-redundant lift is involved during transfer of the cask from the tilting cradle to the secondary yoke, analysis indicates that based on the design of the primary yoke, previous load tests, and a thorough inspection program, a drop of the spent fuel shipping cask is not credible. A non-redundant lift is assumed to have a slightly higher probability of failure than a redundant lift. However, the increased potential for a drop resulting from a non-redundant lift is not significant. Therefore, the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. CP&L has demonstrated that a cask drop accident is not credible using the existing procedures for spent fuel shipping cask handling at BSEP. Therefore, the proposed license amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety. Originally, a cask drop was not deemed a credible accident because the cask redundant lifting yoke is of redundant design and the crane on which it is used is single failure proof. Although a non-redundant lift is involved during transfer of the cask from the tilting cradle to the secondary yoke, a drop of the spent fuel shipping cask is not credible based on the design of the primary yoke, previous load tests, and a thorough inspection program. Since the cask drop remains a non-credible event, the proposed amendment does not result in a reduction of the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 17, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 6, 1997, as supplemented on August 26, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 11th day of September 1997.

For the Nuclear Regulatory Commission.

David C. Trimble,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24680 Filed 9–16–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456 AND STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–72 and NPF–77 issued to the Commonwealth Edison Company (ComEd, the licensee) for operation of the Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendments would revise Technical Specifications (TS) Section 3.4.8, Figure 3.4–1 and Table 4.4–4 and also revise TS Bases Section 3/4.4.8. The revisions reduce the TS maximum allowable dose equivalent (DE) iodine-131 (I–131) concentration in the primary coolant from 0.35 to 0.10 microcuries per gram for the remainder of the present Braidwood, Unit 1, operating cycle (i.e., Cycle 7); this operating cycle is projected to end in September 1998.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Generic Letter 95–05, ''Voltage-Based Repair Criteria For Westinghouse Steam Generator Tubes Affected By Outside Diameter Stress Corrosion Cracking,'' allows lowering of the RCS [Reactor Coolant System] DE I–131 activity as a means for accepting higher projected

leak rates if justification for equivalent I–131 below 0.35 μCi/gm [microcuries per gram] is provided. Four methods for determining the impact of a release of activity to the public were reviewed to provide this justification. These four methods are as follows:

Method 1: NRC NUREG 0800, Standard Review Plan (SRP) Methodology.

Method 2: Methodology described in a report by J.P. Adams and C.L. Atwood, ''The Iodine Spike Release Rate During a Steam Generator Tube Rupture,'' Nuclear Technology, Vol. 94, p. 361 (1991) using Braidwood Station reactor trip data.

Method 3: Methodology described in a report by J.P. Adams and C.L. Atwood, ''The Iodine Spike Release Rate During a Steam Generator Tube Rupture,'' Nuclear Technology, Vol. 94, p. 361 (1991) using normalized industry reactor trip data.

Method 4: Methodology described in a draft EPRI Report TR–103680, Revision 1, November 1995, ''Empirical Study of Iodine Spiking in PWR Plants''.

The effect of reducing the RCS DE I–131 activity limit on the amount of activity released to the environment remains unchanged when the maximum site allowable primary-to-secondary leak rate is proportionately increased and the iodine release rate spike factor is assumed to be 500 in accordance with the SRP. With an RCS DE I–131 activity limit of 1.0 μCi/gm, the maximum site allowable leakage limit was calculated, in accordance with the NRC SRP methodology, to be 9.33 gallons per minute (gpm). The 9.33 gpm allowable leakage limit was calculated for leakage at the normal operating reactor coolant temperature and pressure. This corresponds to a room temperature and pressure leakage limit of 6.63 gpm. ComEd has evaluated the reduction of the RCS DE I–131 activity to 0.10 μCi/gm along with the increase of the allowable leakage to 94 gpm (66.3 gpm at room temperature and pressure) and has concluded:

—assuming a spike factor of 500, the maximum activity released is not changed, and

—the offsite dose, including the iodine spiking factor, will be less than the 10CFR100 limits.

Based on the NRC SRP methodology for dose assessments and assuming the iodine spike factor of 500 is applicable at the new 0.1 μCi/gm RCS DE I–131 activity limit, the Control Room dose, the Low Population Zone dose, and the dose at the Exclusion Area Boundary continue to satisfy the appropriately small fraction of the 10CFR100 dose limits.

An evaluation of the Control Room dose, attributed to an MSLB [main steamline break] accident concurrent with steam generator primary-to-secondary leakage at the maximum site allowable limit, was performed in support of a license amendment request for application of a 1.0 volt Interim Plugging Criteria. This evaluation concluded that the activity released to the environment from an MSLB accident (154 Curies for a Pre-accident iodine spike and 105 Curies for an accident-initiated iodine spike) is bounded by the activity released to the environment from the Loss of Coolant design basis accident (1290 Curies). Therefore, the Control Room dose, due to the MSLB accident scenario, is bounded by the existing Loss of Coolant Accident (LOCA) analysis. The maximum site allowable primary-to-secondary leakage is limited by the offsite dose at the Exclusion Area Boundary due to an accident-initiated spike.

The report by J.P. Adams and C.L. Atwood, ''The Iodine Spike Release Rate During a Steam Generator Tube Rupture,'' Nuclear Technology, Vol. 94, p. 361 (1991), concluded that the NRC SRP methodology, which specifies a release rate spike factor of 500 for iodine activity from the fuel rod to the RCS, is conservative when the RCS DE I–131 concentration is greater than 0.3 μCi/gm. In order to evaluate whether a release rate spike factor of 500 is conservative below 0.3 μCi/gm, actual operating data from the previous reactor trips of Braidwood Units 1 and 2, with and without fuel defects, were reviewed and analyzed using the methodology presented in Section II.C of the Adams and Atwood report (Method 2). The same five data screening criteria described in the Adams and Atwood report were applied to the Braidwood data to ensure consistency and validity when comparing the Braidwood results to the data in the Adams and Atwood report. Of the reactor trip events at Braidwood Units 1 and 2, seventeen (17) met the five data screening criteria.

Seven (7) of the seventeen (17) Braidwood trips occurred during cycles with no fuel defects. In all seven of these instances, the calculated spike factor was much less than the spike factor of 500 assumed in the NRC SRP methodology. Braidwood Unit 1 Cycle 7 is currently operating with no fuel defects and an RCS DE I–131 activity of approximately 3E–4 μCi/gm. The seven previous trips, with no fuel defects, had steady-state iodine values that are reasonably close to the current operating conditions. It is, therefore reasonable to conclude that, assuming continued operation with little to no fuel defects, the calculated spike factors from these events would reflect an actual event for Unit 1 Cycle 7, i.e., the spike factor will be less than 500.

Since some of the spike factors were greater than 500 when the RCS DE I–131 activity, prior to the accident, was less than 0.3 μCi/gm, ComEd examined the conservatisms in the current release rate calculation. The primary reason for these high ratios (up to 12,000) is not because the absolute post-trip release rate is high (factor numerator), but rather because the steady-state release rate (factor denominator) is low. The Braidwood specific data resulted in six (6) events with a calculated release rate spike factor greater than 500. It is not expected, based upon the Unit 1 Cycle 7 fuel conditions, that a spiking factor greater than 500 would occur. The revised RCS DE I–131 activity limit will also ensure that the operating cycle will not continue if significant fuel defects develop.

In order to evaluate the Braidwood specific data against the NRC SRP methodology, the release rate for a steady-state RCS DE I–131 activity of 1.0 μCi/gm was calculated. Using the Braidwood specific data, the pre-trip steady-state release rate is 27.5 Ci/hr. Using a release rate spike factor of 500 for the accident-initiated spike, the post-trip maximum release rate would be 13,733 Ci/hr (SRP Methodology). The highest post-trip iodine release rate from the Braidwood trip data, Event 15, was 1335 Ci/hr. Although this value is lower than that determined by the NRC SRP Method at 1.0 μCi/gm, Braidwood is also requesting an increase in the allowable primary-to-secondary leak rate. By decreasing the TS RCS DE I–131 activity limit by a factor of ten and increasing the allowable leak rate by a factor of ten, the maximum iodine release rate is 1373 Ci/hr. None of the Braidwood data exceeds 1373 Ci/hr, although eight (8) of the 168 data points in the Adams and Atwood report exceed 1373 Ci/hr. The eight (8) data points had a pre-trip RCS DE I–131 activity between 0.09 μCi/gm and 0.6 μCi/gm. Only one (1) of the eight (8) data points had a pre-trip DE I–131 activity below 0.1 μCi/gm.

If the Braidwood data were plotted with the Adams and Atwood data, the conclusions of the Adams and Atwood report would not be compromised. Where the Braidwood data contains spike factors greater than 500, the RCS DE I–131 concentrations are below 0.3 μCi/gm. Since the Braidwood data does not include data near 0.1 μCi/gm (the requested new TS limit), it is appropriate to use the Adams and

Atwood database near 0.1 μCi/gm to determine if a spike factor of 500 is appropriate. The Adams and Atwood database contains forty-two (42) data points with a Pre-Trip RCS DE I–131 activity between 0.05 μCi/gm and 0.15 μCi/gm. Thirty-four (34) of these forty-two (42) data points (81%) have spike factors less than 500. Using the entire Adams and Atwood database, 130 of the 168 data points (77%) have an iodine spike factor less than 500. Therefore, it is reasonable to assume that a spike factor of 500 would not be exceeded for a majority of the events if an MSLB accident were to occur while the RCS DE I–131 activity is at or below 0.1 μCi/gm. The highest spike factor seen in the Adams and Atwood report near a Pre-Trip RCS DE I–131 activity of 0.1 μCi/gm was 1160 (at 0.093 μCi/gm). This release rate is less than the calculated Braidwood maximum value of 1373 Ci/hr.

The predominant factors in calculating the offsite dose are the post-trip iodine release rate from the fuel and the flowrate at which the activity is being released to the environment, not whether the spike factor is greater than or less than 500. The post-trip DE I–131 release rate will determine the level of activity in the RCS that will be released. The flowrate will determine at what rate this activity is released to the environment. Method 3, which used a different approach in the Adams and Atwood report, concluded that, at a 95% confidence of a 90 percentile, the post-trip iodine release rate was bounded by 1.09 Ci/hr-MWe. For Braidwood Station, which has a MWe rating of 1175, the post-trip iodine release rate, at a 95% confidence of a 90 percentile, should not exceed 1280 Ci/hr. One (1) of the seventeen (17) reactor trips from Braidwood exceeded 1280 Ci/hr. This reactor trip had a post-trip iodine release rate of 1335 Ci/hr (spike factor of 3471). The second highest post-trip iodine release rate from the Braidwood data was 802 Ci/hr (spike factor of 1483).

For the combined Adams/Atwood and Braidwood data sets, below 0.1 μCi/gm, all but one data point is bounded by the 1373 Ci/hr release rate. This one data point is bounced [bounded] by the 95% confidence. This data suggests that the possibility for a post-trip iodine fuel release rate to exceed 1373 Ci/hr, when the pre-trip RCS DE I–131 concentration is at or below 0.1 μCi/gm, is small.

In the fourth method, the results from a Draft Electric Power Research Institute (EPRI) Report TR-103680, Rev. 1, November 1995, ''Empirical Study of Iodine Spiking In PWR Power Plants'' were applied. The objective of the EPRI study was to quantify the iodine spiking in a postulated Main Steam Line Break/Steam Generator Tube Rupture (MSLB/SGTR) accident sequences. In the EPRI report, an iodine spike factor between 40 and 150 was determined to match data from existing plant trips. The maximum iodine spike factor value of 150 was applied to a steady-state equilibrium RCS DE I–131 activity of 0.33 μCi/gm. The resulting two-hour average iodine concentration for a postulated MSLB/SGTR accident sequence was determined to be 3.1 μCi/gm. Since the EPRI report is based on industry data and the EPRI method predicted a post-accident iodine activity, which is a small fraction of the activity predicted by the NRC SRP methodology, it can be expected that, for the proposed 0.10 μCi/gm limit under an MSLB/SGTR accident sequence, the post-accident iodine activity would typically be a small fraction of the RCS DE I–131 activity predicted by the NRC SRP methodology. For Braidwood, using the SRP methodology with an RCS DE I–131 activity of 1.0 μCi/gm and a spike factor of 500, the Post-Trip RCS activity two hours after the event would be near 35.5 μCi/gm. At an RCS DE I–131 activity of 0.1 μCi/gm, it would require a spike factor of nearly 5000 to obtain a Post-Trip RCS DE I–131 activity near 35.5 μCi/gm. With a Post-Trip RCS DE I–131 activity of 35.5 μCi/gm, an increase in the allowable leak rate could impact the 10CFR100 limits. To accommodate for an increase in the allowable leak rate by a factor of ten, the resultant activity would need to be below 3.55 μCi/gm. None of the seventeen (17) post-trip data from Braidwood has exceeded 3.55 μCi/gm. The maximum Post-Trip RCS activity seen at Braidwood is 3.29 μCi/gm at approximately three hours after the event.

Based on evaluations by the four methods above, Braidwood can conclude that the current methodology (Method 1) used to predict iodine spiking is conservative. Although dose projections indicate with confidence that the iodine spiking factor limit will be met, the conservatisms in the offsite dose calculation provide added assurance that the 10CFR100 limits, General Design Criteria (GDC) 19 criteria, and the requirements of NRC Generic Letter 95–05 will be satisfied if the iodine spike factor exceeds 500 or the post-trip fuel release rate exceeds 1373 Ci/hr. These conservatisms include, but are not limited to:

1. The RCS DE I–131 activity is more likely to be less than the TS limit. With the current Braidwood Unit 1 RCS DE I–131 activity near 3E–4 μCi/gm with no fuel defects, the spike factor is expected to be considerably smaller than the 500 value.

2. The meteorological data used is at the fifth percentile. It is expected that the actual dispersion of the iodine would result in less exposure at the site boundary than the 30 Rem limit of 10CFR100.

3. Iodine partitioning is not accounted for in the faulted SG. With the high pH of the secondary water, some partitioning is expected to occur. An iodine partition factor of 0.1 is more realistic (per Table 15.1–3 of Byron/Braidwood UFSAR) than the 1.0 valued [value] (no partitioning) used in the offsite dose calculation. This reduces the calculated dose by 90%.

4. Primary-to-secondary leakage is not expected to be at the TS limit (150 gpd) in each of the four SGs prior to the event. Currently, minimal primary-to-secondary leakage (less than 5 gpd) exists at Braidwood Unit 1.

5. The activity in the RCS is not expected to increase instantaneously with the spike in iodine released from the defective fuel.

6. It is unlikely, for the short time period this amendment is being requested (remainder of Cycle 7), that an accident-initiated iodine spike for Braidwood Unit 1 would be greater than the NRC SRP assumed value.

7. The results from the Braidwood tube pull data indicate that the Interim Plugging Criteria leak rate is conservative.

These proposed changes do not result in a significant increase in the consequences of an accident previously analyzed.

The RCS DE I–131 activity limit is not considered as a precursor to any accident. Therefore, this proposed change does not result in a significant increase in the probability of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes proposed in this amendment request conservatively reduce the Unit 1 RCS DE I–131 activity limit at which action needs to be taken. The changes do not directly affect plant operation. These changes will not result in the installation of any new equipment or systems or the modification of any existing equipment or systems. No new operating procedures, conditions or configurations will be created by this proposed amendment.

Accordingly, this proposed change does not create the possibility of a new

or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

NRC Generic Letter 95–05 allows lowering of the RCS dose equivalent iodine as a means for accepting higher projected leakage rates provided justification for the RCS DE I–131 activity below 0.35 μCi/gm is provided. Four methods for determining the fuel rod iodine release rates and spike factors during an accident were reviewed. Each of these methods utilized actual industry data, including Braidwood Units 1 and 2, for pre- and post-reactor trip RCS DE I–131 activities. Each of the methods demonstrated that the actual fuel rod iodine release rates are a small fraction of the release rate as calculated using the NRC SRP methodology. Although these values are a small fraction of that determined by the NRC SRP Method, Braidwood is also requesting an increase in the allowable primary-to-secondary leak rate. By decreasing the TS RCS DE I–131 activity limit by a factor of ten and increasing the allowable leak rate by a factor of ten, the activity released to the public would be equal to or less than the activity calculated by the SRP method for each of the seventeen reactor trip events reviewed at Braidwood. The predicted end-of-cycle 7 leak rate is 62.4 gpm (Room T/P). The calculated site boundary dose due to this leakage is 28.2 Rem. This dose meets the requirements of 10CFR100 and GDC 19. All design basis and off-site dose calculation assumptions remain satisfied. This proposed change would not result in a reduction in a margin of safety.

Therefore, based on the above evaluation, ComEd has concluded that these changes involve no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 17, 1997, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 2, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 11th day of September 1997.

For the Nuclear Regulatory Commission.

M. D. Lynch,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24675 Filed 9–16–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–00001; License No. 24–04206–01; EA 97–155]

Mallinckrodt Medical, Inc. Maryland Heights, Missouri; Order Imposing Civil Monetary Penalty

I

Mallinckrodt Medical, Inc. (Licensee) is the holder of Materials License No. 24–04206–01 which was first issued by the Nuclear Regulatory Commission (NRC or Commission) on January 6, 1975, and renewed in its entirety on October 12, 1990. The license authorizes the Licensee to prepare and package for distribution Mo–99/Tc–99m generators and other radioactive materials in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted during January 10–12, 1997, with continuing review through April 8, 1997. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written notice of violation and Proposed Imposition of Civil Penalty (notice) was served upon the Licensee by letter dated May 30, 1997. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the notice in a letter dated June 30, 1997. In its response, the Licensee admitted that the violation occurred and agreed that a civil penalty is warranted. The Licensee contested the fact that the NRC categorized it as a ''b'' category, industrial processor, as listed in Table 1A-Base Civil Penalties of NUREG–1600, ''General Statement of Policy and Procedures for NRC Enforcement Actions.''

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is hereby ordered that:

The Licensee pay a civil penalty in the amount of $13,750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 9th day of September 1997.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Deputy Director, Office of Enforcement.

Appendix

Evaluation and Conclusion

On May 30, 1997, a Notice of Violation and Proposed Imposition of Civil Penalty (notice) was issued for a violation identified during an NRC inspection. Mallinckrodt Medical, Inc. (Licensee) responded to the Notice in a letter dated June 30, 1997. The Licensee admitted the violation but requested mitigation of the proposed civil penalty based on its contention that the civil penalty was assessed at an inappropriate level. The NRC's evaluation and conclusion regarding the licensee's request is as follows:

Restatement of Violation

10 CFR 71.5(a) requires that a licensee who transports licensed material outside the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR parts 170 through 189.

49 CFR 173.441(a) requires, in part, with exceptions not applicable here, that each package of radioactive materials offered for transportation be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 200 millirem per hour at any point on the external surface of the package.

Contrary to the above, on December 30, 1996, the licensee delivered to a carrier for transport licensed material, a 12 curie Ultra Techna-Kow Mo–99 generator, in a package that arrived at its destination, Mallinckrodt Nuclear Pharmacy in Saginaw, Michigan, with a radiation level of 210 millirem per hour on contact with the outer surface of the package.

This is a Severity Level III violation (Supplement V). Civil Penalty—$13,750

Summary of Licensee's Request for Mitigation

The Licensee agrees in its June 30, 1997 letter that a civil penalty regarding this apparent violation is warranted. However, the Licensee contests the level at which the NRC categorized the civil penalty (i.e.; placement of Mallinckrodt Medical, Inc. into the ''b'' category (industrial processor) of Table 1A–Base Civil Penalties of Section VI.B.2.d. of the NRC Enforcement Policy, NUREG–1600).

The Licensee does not believe that its operations present the magnitude of risk implied by the examples of types of licensees listed in the ''b'' category. The Licensee indicates that category ''c'' or ''d'' of the referenced table is more appropriate for the nature of its operations.

NRC Evaluation of Licensee's Request for Mitigation

The NRC published a revised ''General Statement of Policy and Procedure for Enforcement Actions'' (Enforcement Policy) in the **Federal Register** on June 30, 1995 (60 FR 34381). A significant policy change incorporated into the revised Enforcement Policy was the strategy for assessing civil penalties. According to Table 1A-Base Civil Penalties of the NRC's Enforcement Policy, the current base civil penalty for fuel fabricators, industrial processors, and independent spent fuel and monitored retrievable storage installations is $27,500. The civil penalty for a Severity Level III violation is 50% of the base civil penalty—$13,750. For the purposes of this enforcement action, the staff has determined that the Licensee was properly classified as an industrial processor under category ''b'' of Table 1A-Base Civil Penalties and that the level of the proposed civil penalty was in accordance with the Enforcement Policy.

Mallinckrodt Medical, Inc. is a large organization that obtains or produces radiopharmaceuticals for worldwide distribution, and the Mallinckrodt Maryland Heights Production Facility is one of the largest manufacturing facilities of diagnostic and therapeutic radiopharmaceuticals in the United States. The Licensee is authorized to possess up to 100 curies of any byproduct material within atomic numbers 1 through 83. In addition, the Licensee may posses up to 10,000 curies of Molybdenum-99, 500 curies of Iodine-131, 200 curies of Selenium-75, 450 curies of Xenon-133, and 200 curies of Rhenium-186. The Licensee employs approximately 280 individuals at its Maryland Heights Production Facility and processes on average 4,000 curies of Molybdenum-99, 70–100 curies of Iodine-131, and 50 curies of Xenon-133 weekly.

Previously, when the Enforcement Policy was published as 10 CFR Part 2, Appendix C, the term ''industrial processors'' was defined as ''Large firms engaged in manufacturing or distribution of byproduct, source or special nuclear material'' in a footnote to Table 1A-Base Civil Penalties (e.g.; see footnote 3 to Table 1A-Base Civil Penalties on page 147 of 10 CFR Ch. I (1–1–94 Edition)). On page II.D–39 of the basis document for the revised Enforcement Policy, NUREG–1525, ''Assessment of the NRC Enforcement Program,'' the stated purpose for revising Table 1A-Base Civil Penalties was to simplify it by combining categories of licensees with the same base civil penalty amounts. The proposed Table 1A-Base Civil Penalty Amounts in NUREG–1525 contained a footnote describing industrial processors as ''Large firms engaged in manufacturing or distribution of byproduct, source or special nuclear material.'' Although the footnote that specifically defined the term industrial processors was omitted [1] when the Enforcement Policy was reprinted as NUREG–1600, there is no indication that the term means anything different now than it has in recent years.

Mallinckrodt Medical, Inc. fits the definition of an industrial processor as previously defined in the Enforcement Policy and is appropriately categorized as an industrial processor for purposes of assessing the civil penalty. On a daily basis, the Licensee manipulates, prepares, and/or distributes to hospitals and radiopharmacies multi-curie quantities of Molybdenum-99, Iodine-131, and other radioactive materials. As a large producer and distributor of radioactive materials, Mallinckrodt's operations involve greater nuclear material inventories and have a greater potential for adverse consequences, if not properly controlled, than many other material licensees (i.e.; those classified as category ''c'' or ''d'').

In accordance with the NRC's Enforcement policy, under the revised civil penalty assessment strategy, the base civil penalty for a violation is determined using Table 1A-Base Civil Penalties. Under the revised civil penalty assessment strategy, a violation involving transportation of radioactive materials can be assessed the same base civil penalty as a violation involving plant operations or health physics. This is a significant change from the NRC's prior strategy, which used both the category of the licensee and the type of activity being conducted (e.g.; plant operations, health physics, or transportation) to assess a base civil penalty. Under the prior civil penalty assessment strategy, the base civil penalty for a violation involving transportation of radioactive materials was different than the base civil penalty for a violation involving plant operations or health physics. In accordance with the Enforcement Policy, under the revised civil penalty assessment strategy, the staff does not consider the type of activity (e.g.; the magnitude of risk associated with a particular type of activity such as transportation of radioactive materials versus plant operations) when assessing a civil penalty.

NRC Conclusion

The NRC has concluded that an adequate basis for changing the penalty category was not provided by the Licensee. Consequently, the proposed civil penalty in the amount of $13,750 should be imposed.

[FR Doc. 97–24678 Filed 9–16–97; 8:45 am]

BILLING CODE 7590–01–P

[1] The footnote defining industrial processors as ''Large firms engaged in manufacturing or distribution of byproduct, source or special nuclear material'' was inadvertently left out of the June 30, 1995, **Federal Register** Notice.

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Industrial Radiography Licenses, Availability of Draft NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of and requesting comment on draft NUREG–1556, Vol. 2, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance

about Industrial Radiography Licenses,'' dated August 1997.

NRC is consolidating and updating numerous guidance documents into a series of program specific guidance documents to be published in a NUREG format. All NUREGs in the series will carry the number and title: NUREG 1556, Volume X, ''Consolidated Guidance About Materials Licenses.'' Each specific guidance document will have an identifying volume number, and the title of the specific guidance will appear as the sub-title of the NUREG. This draft NUREG is the second guidance document to be published in this series; therefore it is listed as Volume 2.

This draft NUREG report is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel. This guidance corresponds with the revision to 10 CFR part 34 published in May 1997. It combines and updates the guidance for applicants and licensees previously found in draft Regulatory Guide FC 401–4, ''Guide for the Preparation of Applications for the Use of Sealed Sources and Devices for Performing Industrial Radiography,'' (dated October 1984), and the guidance for licensing staff previously found in Policy and Guidance Directive FC 84–15, ''Standard Review Plan for Applications for the Use of Sealed Sources and Devices for Performing Industrial Radiography,'' dated October 1994. In addition, this draft report also contains information found in pertinent Technical Assistance Requests and Information Notices. This draft report takes, where applicable, a more graded (or risk-informed) and performance-based approach to licensing industrial radiography consistent with the current regulations.

This draft NUREG report has been distributed for comment to encourage public participation in its development. It represents the current position of the NRC staff, which is subject to change after the review of public comments. Comments received will be considered in developing the final NUREG report that represents the official NRC staff position. Until the final NUREG report is published, this draft NUREG report represents the best available guidance, and may be used when preparing requests for licensing actions. Once the final NUREG report is published, NRC staff will use it in its review of requests for licensing actions. The draft and final NUREG reports may differ. If a license was issued or amended based on recommendations in the draft NUREG report and the final guidance is believed to be more advantageous, licensees may choose to request an amendment.

DATES: The comment period ends November 17, 1997. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to DLM1@NRC.GOV.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 2, by writing to the U.S. Nuclear Regulatory Commission, ATTN: J. Bruce Carrico, Mail Stop TWFN 8F5, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to JBC@NRC.GOV. A copy of draft NUREG–1556, Volume 2, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: J. Bruce Carrico, Mail Stop TWFN 8–F5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7826; electronic mail address: JBC@NRC.GOV.

Electronic Access

NUREG–1556, Volume 2, is also available electronically by visiting NRC's Home Page (http://www.nrc.gov) and choosing ''Nuclear Materials,'' then ''Business Process Redesign project,'' then ''Library,'' and then ''draft NUREG–1556, Volume 2.''

Dated at Rockville, Maryland, this 28th day of August, 1997.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–24677 Filed 9–16–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Sequestration Update Report

AGENCY: Office of Management and Budget—Budget Analysis Branch.

ACTION: Notice of transmittal of sequestration update report to the President and Congress.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Ellen Balis, Budget Analysis Branch—202/395–4574.

Dated: September 10, 1997.

Clarence C. Crawford,

Associate Director for Administration.

[FR Doc. 97–24640 Filed 9–16–97; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1997.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of September 1, 1997, of ten rescission proposals and seven deferrals contained in three special messages for FY 1997. These messages were transmitted to Congress on December 4, 1996, and on February 10 and March 19, 1997.

Rescissions (Attachments A and C)

As of September 1, 1997, ten rescission proposals totaling $407 million had been transmitted to the Congress. Congress approved six of the Administration's rescission proposals, totaling $285 million, in P.L. 105–18. Attachment C shows the status of the FY 1997 rescission proposals.

Deferrals (Attachments B and D)

As of August 1, 1997, $882 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1997.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this

cumulative report is printed in the editions of the **Federal Register** cited below:

61 FR 66172, Monday, December 16, 1996

62 FR 8045, Friday, February 21, 1997

62 FR 14478, Wednesday, March 26, 1997

Franklin D. Raines,

Director.

ATTACHMENT A—STATUS OF FY 1997 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	407.1
Rejected by the Congress	−122.0
Amounts rescinded by P.L. 105–18	−285.1
Currently before the Congress	.....

ATTACHMENT B—STATUS OF FY 1997 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	3,544.3
Routine Executive releases through September 1997 (OMB/Agency releases of $2,662.8 million.)	−2,662.8
Overturned by the Congress	.....
Currently before the Congress	881.5

BILLING CODE 3110–01–P

ATTACHMENT C

Status of FY 1997 Rescission Proposals - As of September 1, 1997
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Foreign Agricultural Service								
P.L. 480 grants -- Titles I (OFD), II, and III.....	R97-1		3,500	2-10-97	3,500	4-30-97		
P.L. 480 program account.....	R97-2		46,500	2-10-97	46,500	4-30-97		
DEPARTMENT OF DEFENSE - MILITARY								
Operation and Maintenance								
Operation and maintenance, Defense-wide.....	R97-4		10,000	2-10-97	10,000	4-28-97		
Procurement								
National Guard and Reserve equipment.....	R97-5		62,000	2-10-97	62,000	4-28-97		
DEPARTMENT OF ENERGY								
Energy Programs								
Strategic petroleum reserve.....	R97-6		11,000	2-10-97	11,000	4-28-97	11,000	P.L. 105-18
Clean coal technology.....	R97-11		10,000	3-19-97		6-12-97	10,000	P.L. 105-18
Power Marketing Administrations								
Construction, rehabilitation, operation and maintenance, Western Area Power Administration.....	R97-7		2,111	2-10-97	2,111	4-28-97	2,111	P.L. 105-18

ATTACHMENT C

Status of FY 1997 Rescission Proposals - As of September 1, 1997
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs								
Annual contributions for assisted housing.....	R97-8		250,000 1/	2-10-97	1/	6-12-97	250,000	P.L. 105-18
DEPARTMENT OF JUSTICE								
General Administration								
Working capital fund.....	R97-9		6,400	2-10-97	*	6-12-97	6,400	P.L. 105-18
GENERAL SERVICES ADMINISTRATION								
General Activities								
Expenses, Presidential transition.....	R97-10		5,600 2/	2-10-97	2/	6-12-97	5,600	P.L. 105-18
TOTAL RESCISSIONS.....		**0**	**407,111**		**135,111**		**285,111**	

1/ Funds are not available for obligation pursuant to section 218 of P.L. 104-208.
2/ Funds are not available for obligation pursuant to 2 USC 102 (note).
* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1997 Deferrals - As of September 1, 1997
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9-1-97
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D97-1	1,258,292		12-4-96	1,050,927				207,365
Foreign military financing program	D97-2	1,412,375		12-4-96	1,412,205				170
Foreign military financing loan program	D97-3	60,000		12-4-96					60,000
Foreign military financing direct loan financing account	D97-4	540,000		12-4-96					540,000
Agency for International Development									
International disaster assistance, Executive	D97-5	147,800		12-4-96	146,690				1,110
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D97-6	118,486		12-4-96	53,000				65,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D97-7	7,365		12-4-96					
	D97-7A		4	2-10-97					7,369
TOTAL, DEFERRALS		**3,544,318**	**4**		**2,662,822**			**0**	**881,500**

[FR Doc. 97–24749 Filed 9–16–97; 8:45 am]
BILLING CODE 3110–01–C

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22817; File No. 811–4818]

Great American Reserve Variable Annuity Fund; Notice of Application

September 11, 1997.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under Section 8(f) of the Investment Company Act of 1940 (''1940 Act'').

SUMMARY: Applicant seeks an order declaring that is has ceased to be an investment company as defined by the 1940 Act.

APPLICANT: Great American Reserve Variable Annuity Fund.

FILING DATES: The application was filed on April 1, 1996, and amended and restated on July 8, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 6, 1997, and should be accompanied by proof of service on Applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Great American Reserve Variable Annuity Fund, 11815 N. Pennsylvania St., Carmel, Indiana 46032.

FOR FURTHER INFORMATION CONTACT: Michael Koffler, Attorney, or Mark Amorosi, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth St., N.W., Washington, D.C. 20549.

Applicant's Representations

1. Applicant, a separate account of Great American Reserve Insurance Company (''Great American Reserve''), is an open-end, diversified management investment company for which a notification of registration as an investment company on Form N–8A was filed with the Commission on August 29, 1986. Applicant succeeded to the business of Voyager Variable Annuity Fund, a separate account established in 1980 by Voyager Life Insurance Company from whom Great American Reserve acquired the assets of Applicant on May 15, 1986. On December 27, 1985, Applicant filed a registration statement under the Securities Act of 1933 on Form N–3 (File No. 33–2458), for individual and group variable annuity contracts. The registration statement was declared effective on or about May 20, 1986.

2. The security holders of Applicant, Great American Reserve Variable Annuity Account C (''Account C'') and Great American Reserve Variable Annuity Account D (''Account D''), at a combined special meeting of security holders held on December 14, 1992, approved an Agreement and Plan of Reorganization (''Reorganization'') of Applicant, Account C and Account D. The Board of Directors of Great American Reserve authorized the Reorganization on February 28, 1993.

3. On May 1, 1993, the effective date of the Reorganization, Applicant, Account C and Account D were combined and restructured into a single unit investment trust separate account (Account C). The security holders of Applicant received an interest in the Common Stock Sub-account of Account C in exchange for, and equal in value to, their interest in Applicant.

4. Great American Reserve paid all expenses associated with Applicant's merger.

5. Within the last 18, months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant

6. Applicant has not assets, no debts or other liabilities, and no security holders. Applicant is not a party to any litigation or administrative proceeding, and is not engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24685 Filed 9–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22818; File No. 811–4820]

Great American Reserve Variable Annuity Account D; Notice of Application

September 11, 1997.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under Section 8(f) of the Investment Company Act of 1940 (''1940 Act'').

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

APPLICANT: Great American Reserve Variable Annuity Account D.

FILING DATES: The application was filed on April 1, 1996, and amended and restated on July 8, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 6, 1997, and should be accompanied by proof of service on Applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Great American Reserve Variable Annuity Fund, 11815 N. Pennsylvania St., Carmel, Indiana 46032.

FOR FURTHER INFORMATION CONTACT: Michael Koffler, Attorney, or Mark Amorosi, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549.

Applicant's Representations

1. Applicant, a separate account of Great American Reserve Insurance

Company (''Great American Reserve''), is an open-end, diversified management investment company for which a notification of registration as an investment company on Form N–8A was filed with the Commission on August 29, 1986. Applicant succeeded to the business of Voyager Variable Annuity Account D, a separate account established in 1980 by Voyager Life Insurance Company from whom Great American Reserve acquired the assets of Applicant on May 15, 1986. On December 27, 1985, Applicant filed a registration statement under the Securities Act of 1933 on Form N–3 (File No. 33–2459), for individual and group variable annuity contracts. The registration statement was declared effective on or about May 20, 1986.

2. The security holders of Applicant, Great American Reserve Variable Annuity Account C (''Account C'') and Great American Reserve Variable Annuity Fund (''Annuity Fund''), at a combined special meeting of security holders held on December 14, 1992, approved an Agreement and Plan of Reorganization (''Reorganization'') of Applicant, Account C and Annuity Fund. The Board of Directors of Great American Reserve authorized the Reorganization on February 28, 1993.

3. On May 1, 1993, the effective date of the Reorganization, Applicant, Account C and Annuity Fund were combined and restructured into a single unit investment trust separate (Account C). The security holders of Applicant received an interest in the Money Market Sub-account of Account C in exchange for, and equal in value to, their interest in Applicant.

4. Great American Reserve paid all expenses associated with Applicant's merger.

5. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant

6. Applicant has no assets, no debts or other liabilities, and no security holders. Applicant is not a party to any litigation or administrative proceeding, and is not engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24686 Filed 9–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (The New York Times Company, Class A Common Stock, $0.10 Par Value) File No. 1–5837

September 11, 1997.

The New York Times Company (''Company'') has filed an application with Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it believes that listing the Security on the New York Stock Exchange, Inc. (''NYSE'') will provide the Company with a higher profile venue for trading and that the holders of the Security will benefit from access to the larger trading market offered by the NYSE.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolutions adopted by the Board of Directors of the Company authorizing the withdrawal of the Security from listing and registration on the Amex, and a statement of Mr. Solomon B. Watson IV, the Senior Vice President and General Counsel of the Company, setting forth in detail the reasons for such proposed withdrawal, and the facts in support thereof.

Any interested person may, on or before October 2, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matters.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–24684 Filed 9–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 15, 1997.

A closed meeting will be held on Wednesday, September 17, 1997, at 3:00 p.m. An open meeting will be held on Thursday, September 18, 1997, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, September 17, 1997, at 3:00 p.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, September 18, 1997, at 2:30 p.m., will be:

Consideration of whether to issue a release soliciting comment on proposals to improve the operation of rule 14a–8. Rule 14a–8 governs the submission of shareholder proposals to companies and their inclusion in companies' proxy materials. The proposals would also make related amendments to rules 13d–5, 14a–2, 14a–4, and 14a–5. The Commission will simultaneously issue a report on its study of the shareholder proposal process required by Section 510(b) of the National Securities Markets Improvement Act of 1996. For FURTHER INFORMATION: Contact Frank Zarb, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900.

Commissioner Johnson, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: September 15, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–24867 Filed 9–15–97; 3:55 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Legend Sports, Inc.; Order of Suspension of Trading

September 15, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Legend Sports, Inc. (''Legends'') because of questions regarding, among other things, the current financial condition of Legends.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m., EDT, September 15, 1997 through 11:59 p.m. EDT, on September 26, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24826 Filed 9–15–97; 12:38 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39049; File No. SR–NASD–97–66]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Change to its Policy Regarding Limit Order Protection

September 10, 1997.

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 September 4, 1997, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Nasdaq Stock Market, Inc. (''Nasdaq''). The NASD and Nasdaq have designated this proposal as one constituting a stated policy and interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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 to amend an interpretation to its existing Limit Order Protection Rule, IM 2110–2.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

The NASD has determined to revise its existing policy interpretation regarding a member's trading ahead of a customer limit order when the member offers price improvement over that limit order. The NASD's Limit Order Protection Rule, IM–2110–2 (commonly referred to as the ''Manning Rule''), prohibits any member from trading at the same price as, or at a price inferior to, a customer limit order that it holds. When the Limit Order Protection Rule was first expanded in 1995,[1] members inquired about the effect of this rule on their trading activity when the member traded with another customer at a price better than the customer limit order. Of particular concern was the amount better at which a member could trade without violating the Manning Rule. In Notice To Members 95–43, the NASD interpreted the Manning Rule to require members to trade at least 1/64th better than the held customer limit order.

Since the statement of this policy in Notice To Members 95–43, several significant changes have occurred in The Nasdaq Stock Market, including the SEC's adoption of the Order Execution Rules, in particular Rule 11Ac1–4, refinements to best execution policies as stated in the SEC's release adopting the Order Execution Rules,[2] and the move to quotation increments of sixteenths. These changes to improve the treatment of customer orders have resulted in re-evaluation by the NASD of its Manning Rule policy regarding price improvement. The new policy is set forth below and will be announced to all members in Notice To Members 97–57 (September, 1997).

To enable members to understand the new policy the Notice will set out the following example:

- Nasdaq Inside Market: 20—20¼ (10 × 10).
- MMA receives a customer limit order to buy at 20 1/16 for 2,000 shares.
- MMA changes its quote to 20 1/16 for 2,000 shares to reflect the price of the customer limit order.
- MMA receives a market order to sell 2,500 shares.

May MMA offer the market price improvement over the 20 1/16th limit order and execute the market order for its own account? If so, what is the minimum amount of price improvement allowable?

Under the new policy, MMA is allowed to execute the market order at a price better than the limit order. However, the NASD and Nasdaq, after consultation with the Quality of Markets Committee, believe that the minimum amount of price improvement that would permit a market maker to avoid a violation of the Manning Rule is 1/16th, where the actual quotation spread is greater than 1/16th; however, where the actual quotation spread is the minimum quotation increment, the minimum price improvement is one-half of the normal minimum quote increment. In the example above, since the actual spread is 20 1/16—20¼, the minimum price improvement is 1/16th. Thus, MMA could trade ahead of the limit order at 20⅛th. If the actual spread were 20 1/16—20⅛, since the security is priced at more than $10 per share, the minimum quote increment is 1/16th. If the market maker want to trade with an incoming market order to sell without

[1] *See* Notice to Members 95–43.

[2] Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

triggering its Manning obligations to the buy limit order, the market maker must buy from the sell order at 20 3/32nds. Similarly, if the security were priced under $10 and quoted at 5 1/32—5 1/16, the minimum price improvement to avoid a violation of the Manning Rule would be 1/64th better than a buy limit order it holds.

This represents a change from previous statements regarding price improvement. In Notice To Members 95–43, regarding the Manning Rule, the NASD and Nasdaq stated that market makers may avoid violating Manning if they execute for their own accounts at 1/64th better than the limit order price. This statement no longer is applicable and is superseded by this new policy interpretation as of the date of the publication of Notice To Members 97–57.

The NASD and Nasdaq believe that the new interpretation increases investor protection by clarifying a member's obligations to customer limit orders. Accordingly, the NASD and Nasdaq believe that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [3] in that it protects investors and the public interest, and is designed to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD and Nasdaq do 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

The foregoing rule change will become effective when the new interpretation appears in NASD Notice To Members 97–57, as it constitutes a stated policy and interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act and Rule 19b–4(e)(1) thereunder.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange 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 the 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–97–66 and should be submitted by October 8, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24589 Filed 9–16–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. § 78*o*–3.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39048; File No. SR–PTC–97–03]

Self-Regulatory Organizations; Participants Trust Company; Order Approving a Proposed Rule Change Relating to a Change in the Cut-off Time for Intraday Return of Prefunding Payments

September 10, 1997.

On May 1, 1997, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–PTC–97–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 27, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends PTC's rules to extend from 11:00 a.m. to 1:00 p.m. the cut-off time for a participant to request that PTC return to them their prefunding payments made to PTC earlier that day. Under the rule change, only prefunding payments which are no longer needed to support transaction processing are eligible for intraday return.

PTC originally amended its rules in August 1996, to permit the intraday return of prefunding payments.[3] Before the rule change, PTC's rules required that prefunding payments be applied to end-of-day settlement or be made available for withdrawal on the next business day or thereafter.

On September 9, 1996, PTC implemented intraday return of prefunding payments as a pilot program (''Program''). The procedures established for the Program included, among other things,[4] that only prefunding payments received by PTC between 8:30 a.m. and 11:00 a.m. were eligible for return. PTC expected to make all returns between 11:00 a.m. and 12:00 p.m. These initial procedures were incorporated in PTC's Participant Operating Guide.

When the Commission approved the Program, the Commission's order noted, ''Upon implementation of the Program, PTC plans to evaluate the initial procedures on a quarterly basis and will make changes based on such procedures as necessary based upon PTC's experience with the Program. PTC will be required to file with the Commission a proposed rule change prior to any change or modification of the initial procedures.'' [5]

In developing the Program, PTC expected that its participants would be able to determine their excess prefunding amounts by 11:00 a.m. in order to request a return by that time. After the Program's implementation, PTC monitored prefunding payments

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38759 (June 23, 1997), 62 FR 34725.

[3] Securities Exchange Act Release No. 37515 (August 2, 1996), 61 FR 41677.

[4] The Program's procedures also included the following: (1) all prefunding return transactions are subject to PTC's standard credit checks (*i.e.*, prefunding payments may be returned only if the participant will be within its net free equity and net debit monitoring level requirements after the prefunding payments are returned); (20 during the initial stage of the pilot program, only 80% of qualifying prefunding payments are eligible for return; (3) participants are allowed only one request per day; and (4) the minimum amount eligible for return is $10 million. The proposed rule change does not amend these procedures.

[5] *Supra* note 3, at n. 4.

and observed that participants with excess cash which could be withdrawn by 11:00 a.m. elected not to do so. PTC was advised by its participants that 1:00 p.m. would be a more appropriate cut-off time to request return of prefunding payments.

II. Discussion

Section 17A(b)(3)(F) of the Act [6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of PTC or for which it is responsible. By extending the time to request return of prefunding payments to 1:00 p.m., PTC's participants will be better able to determine whether prefunding payments on deposit with PTC will be required to support transactions at PTC. Furthermore, PTC is not changing the Program's requirement whereby PTC will not return any prefunding payments unless the requesting participant is within its net free equity and net debit monitoring level controls at the time the request is made. Therefore, the Commission believes that even with the later cut-off time for requesting return prefunding payments PTC should be able to continue to provide for the intraday return of prefunding payments while still assuring the safeguarding of securities and funds in its custody or control.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PTC–97–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24588 Filed 9–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39044; File No. SR–Phlx–97–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Registration Fees for Registered Representatives

September 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], notice is hereby given that on August 25, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx seeks to amend its fee schedule pertaining to registration for Registered Representatives (''RR''). Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

* * * * *

	Phlx fee structure
Membership Dues or Foreign Currency User Fees*	$1000.00 semi-annually.
Application Fee	200.00.
Initiation Fee—Members, Participants and Approved Lessors	1500.00.
Transfer Fee	500.00.
Trading Post/Booth	375.00 quarterly.
Floor Facility Fees	187.50 quarterly.
Direct Wire to Floor	60.00 quarterly.
Telephone System Line Extensions	22.50 monthly/per extension.
Execution Services/Communication Charge	200.00 monthly.
Stock Execution Machine Registration Fee (Equity Floor)	300.00 per unit.
Equity, Option or FCO Transmission Charge	750.00 monthly.
FCO pricing tape	600.00.
Option Report Service:	
New York	600.00.
Chicago	800.00.
Examinations Fee**	1000.00 monthly.
Technology Fee	100.00 monthly.
Registered Representative Registration:	
Initial	*12.00* [$10.00].
Maintenance	*12.00 annual* [$10.00 annual].
Transfer	*12.00* [$10.00].

*An exemption from foreign currency user fees is extended to PHLX members also holding title to a foreign currency options participation.

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[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1994).

**This fee is applicable to member/participant organizations for which the PHLX is the DEA. The following organizations are exempt: (1) inactive organizations; (2) organizations operating from the PHLX trading floor which have demonstrated that at least 25% of their income as reflected on the most recently submitted FOCUS Report was derived from floor activities; (3) organizations for any month where they incur transaction or clearance fee charges directly by the Exchange or by its registered subsidiary, provided that the fees exceed the examinations fee for that month; and (4) organizations affiliated with an organization exempt from this fee due to the second or third category. Affiliation includes an organization that is a wholly owned subsidiary of, or by under common control with, an ''exempt'' member or participant organization. An inactive organization is one which had no securities transaction revenue, as determined by semi-annual FOCUS reports, as long as the organization continues to have no such revenue each month.

* * * * *

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 Phlx 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 Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to increase its fees for the initial, maintenance and transfer of RR registration with the Exchange from $10.00 to $12.00. These fees, which were adopted in 1993,[2] and subsequently adjusted in 1995,[3] were intended to offset Exchange regulatory costs based on the number of registrations maintained by member organizations. The registration fees are payable by member organizations that apply for, maintain and transfer RR registrations. Specifically, the Exchange will increase the $10.00 fee for all initial RR registrants to $12.00. The $10.00 annual maintenance fee also will increase to $12.00 for each RR. Lastly, the $10.00 fee for transfers of RR registrations will increase to $12.00. This increase will become effective upon the November 1997 billing for the January 1998 fee, which is conducted and collected for the Exchange by the National Association of Securities Dealers, Inc. (''NASD''). The $12.00 fees apply to 1998 registrations. Any initial registration in 1997 would continue to be subject to the $10.00 initial registration fee. Any maintenance and transfer fees incurred for calendar year 1997 would continue to be subject to the $10.00 maintenance or transfer fee.

The purpose of the proposed rule change is to address the increased costs associated with maintaining a fair and orderly market in Exchange products due to growing trading volume which drives the need for enhanced automated surveillance in an increasingly sophisticated trading environment. The proposed fee increase also addresses an increase in the number of listed products traded by the Exchange as ''primary issues,'' the number of trading vehicles with new features, and the number of surveillance investigations conducted, including the resultant disciplinary actions.

The Exchange continues to believe that a strong regulatory program is essential to an exchange's ability to maintain a fair and orderly market for the investment community. Since the adoption of the RR fees, the Exchange has listed additional issues and new products, triggering additional regulatory costs. Most notably, the general costs associated with the Exchange's regulatory program have continued to rise. Inflationary increases have also affected the cost of staffing, equipment, technology and other continuing expenses, which have risen since the last increase in 1995.

2. Statutory Basis

The proposed registration fee increase is consistent with Section 6(b)(4) of the Act[4] in that it provides for the equitable allocation of reasonable dues, fees or charges among the Exchange's members and issuers and other persons using its facilities. The Exchange notes that the implementation of such a fee is similar to other exchanges, including the American Stock Exchange, Chicago Board Options Exchange, New York Stock Exchange, NASD and Pacific Exchange.[5] The Exchange believes that the fee increase from $10.00 to $12.00 is reasonable in light of increasing regulatory costs and the anticipated 1998 budgetary costs since the fee was last adjusted in 1995.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective on August 25, 1997, pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (e) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange 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

[2] Securities Exchange Act Release No. 32833 (September 14, 1993), 58 FR 48922 (September 20, 1993) [File No. SR–Phlx–93–24].

[3] Securities Exchange Act Release No. 36348 (October 6, 1995), 60 FR 53450 (October 13, 1995) [File No. SR–Phlx–95–59].

[4] 15 U.S.C. § 78f(b)(4) (1994).

[5] *See e.g.*, Securities Exchange Act Release No. 36733 (January 17, 1996), 61 FR 1954 (January 24, 1996) [File No. SR–AMEX–95–55]; Securities Exchange Act Release No. 36119 (August 18, 1995), 60 FR 44372 (August 25, 1995) [File No. SR–CBOE–95–31]; Securities Exchange Act Release No. 35796 (June 1, 1995), 60 FR 30625 (June 9, 1995) [File No. SR–NYSE–95–20]; Securities Exchange Act Release No. 38112 (January 3, 1997), 62 FR 1350 (January 9, 1997) [File No. SR–NASD–96–53]; Securities Exchange Act Release No. 29954 (November 18, 1991), 56 FR 59315 (November 25, 1991) [File No. SR–PSE–91–37]; and Securities Exchange Act Release No. 31425 (November 9, 1992); 57 FR 54371 (November 17, 1997) [File No. SR–PSE–92–31].

[6] 15 U.S.C. § 78s(b)(3)(A)(1994).

[7] 17 CFR 240.19b–4(e)(1997).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–41 and should be submitted by October 8, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24590 Filed 9–16–97; 8:45 am]

BILLING CODE 8010–01–M

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 October 17, 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, SW., 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, DC. 20503.

Title: SBA Counseling Evaluation.

Form No: 1419.

Frequency: Annually.

Description of Respondents: Small Business Clients.

Annual Responses: 2,800.

Annual Burden: 476.

Dated: September 11, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–24645 Filed 9–16–97; 8:45 am]

BILLING CODE 8025–01–P

[8] 17 CFR 200.30–3(a)(12) (1997).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–17]

WTO Dispute Settlement Proceeding Regarding Certain Indonesian Measures Affecting the Automobile Industry

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that, at the request of the United States, a dispute settlement panel has been established under the Agreement Establishing the World Trade Organization (WTO), to examine certain Indonesian measures affecting the automobile industry. More specifically, in this dispute the United States alleges that the Indonesian measures in question are inconsistent with several WTO agreements, including Articles I:1, III:2, and III:7 of the General Agreement on Tariffs and Trade 1994 (GATT 1994); Article 2 of the Agreement on Trade-related Investment Measures (TRIMs Agreements); Articles 3, 20 and 65 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement); and Article 28.2 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement); In addition, the United States alleges that the measures in question constitute subsidies that cause ''serious prejudice'' to the interests of the United States in view of Articles 6 and 27 of the SCM Agreement. USTR also invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before October 3, 1997, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Ileana Falticeni, Office of Monitoring and Enforcement, Room 501, Attn: Indonesia Automobile Industry Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT:

William D. Hunter, Assistant General Counsel, (202) 395–3582, or Mary Latimer, Office of Asia & the Pacific, (202) 395–4755.

SUPPLEMENTARY INFORMATION: On June 12, 1997, the United States requested the establishment of a WTO dispute settlement panel to examine whether certain Indonesian measures affecting the automobile industry are inconsistent with Indonesia's obligations under several WTO agreements, and whether such measures constitute subsidies that cause serious prejudice to the interests of the United States under the SCM Agreement. Previously, on April 17, 1997 and May 12, 1997, Japan and the European Communities (EC), respectively, had requested the establishment of a panel regarding some of the same measures, making claims that were similar to, but narrower in scope than, those made by the United States. On June 12, 1997, the WTO Dispute Settlement Body (DSB) established a panel to examine the complaints of Japan and the EC. On July 30, 1997, the DSB established a panel to examine the U.S. complaint, and decided to consolidate the U.S. panel with the Japan/EC panel established earlier. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within twelve months after it is established.

Major Issues Raised by the United States and Legal Basis of Complaint

In 1993, Indonesia adopted a system of incentives for manufacturers of motor vehicles and parts in the form of duty reductions on imports of certain products and tax reductions on the sale of motor vehicles. These incentives are conditional on compliance with local content requirements with respect to inputs. In February, 1996, Indonesia expanded this system of incentives to provide additional tax and tariff incentives designed to promote a ''national car'' that was produced by an Indonesian company, carried a unique Indonesian trademark, and had a gradually-increasing percentage of local content over the ensuing three years. Indonesia made a modification to this program in June, 1996, when it

permitted the ''national car'' to be produced outside Indonesia.

The USTR believes that these measures are inconsistent with several provisions of the WTO agreements, including the following:

—The grant of tax and tariff benefits under the ''national motor vehicle'' program to finished cars imported into Indonesia from a sole supplier in Korea is inconsistent with Articles I:1 and III:7 of the GATT 1994;

—The grant of benefits tied to percentage local content under the 1993 program and the ''national car'' program is inconsistent with Article III:4 of the GATT 1994 and Article 2 of the TRIMs Agreement;

—The effective imposition of a lower tax on domestic motor vehicle parts and components than on imported parts components is inconsistent with Article III:2 of the GATT 1994;

—The grant of luxury tax-free treatment to ''national motor vehicle'' that is not granted to imported finished vehicles is inconsistent with Article III:2 of the GATT 1994;

—The grant of national car benefits only to those cars bearing a unique Indonesian trademark owned by Indonesia nationals discriminates against foreign-owned trademarks and their owners in a manner inconsistent with Articles 3, 30 and 65 of the TRIPs Agreement;

—The adoption of the ''national car program'' in 1996 had the effect of extending the scope of tax- and tariff-based subsides in a manner inconsistent with Article 28.2 of the SCM Agreement; and

—The grant of the tax and tariff benefits described above constitute specific subsidies that cause serious prejudice to the interests of the United States within the meaning of the SCM Agreement by displacing or impeding imports of U.S. motor vehicles, and of parts or components thereof, into the Indonesian market and/or by creating significant price and undercutting, price suppression, price depression and/or loss of sales for U.S. exporters to that market.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) must so designate that information or advice;

(2) must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room; Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–17 (''U.S.-Indonesia Automobile Industry Dispute'') may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 97–24671 Filed 9–16–97; 8:45 am]

BILLING CODE 3190–01–M

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 on May 29, 1997 (62 FR 29183–29184).

DATES: Comments must be submitted on or before October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Winans, Office of Engineering, (202) 366–4656, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m.—4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Developing and Recording Costs for Railroad Adjustments.

OMB Number: 2125–0521.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Affected Public: Railroad companies.

Abstract: Under the provisions of 23 U.S.C. 130 and 23 U.S.C. 101(a), Federal-aid highway funds may be used to reimburse State highway agencies when they have paid for the cost of projects that eliminate hazards at railroad/highway crossings or that adjust railroad facilities to accommodate the construction of highway projects. Section 121 of Title 23 establishes the general principle that when Federal-aid highway funds are being used to reimburse State highway agencies for construction costs, Federal payment shall be based on costs incurred. FHWA regulation 23 CFR part 140, subpart I requires that each railroad company be able to document its costs or expenses for adjusting its facilities. Each railroad company is required to have a system of recording labor, materials, supplies and equipment costs incurred when undertaking necessary railroad work. This record of costs forms the basis for payment by the State highway agency to the railroad company and, in turn, FHWA reimburses the State for its payment to the railroad.

Estimated Annual Burden Hours: 36,800.

Number of Respondents: 115.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 10, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–24649 Filed 9–16–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss airplane and engine issues.

DATES: The meeting will be held on October 2 and October 3, 1997 beginning at 8:00 a.m. on October 2. Arrange for oral presentations by September 22, 1997.

ADDRESSES: The meeting will be held at General Aviation Manufacturers Association, 1400 K Street, NW, Suite 801, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held October 2 and 3, 1997 at General Aviation Manufacturers Association, 1400 K Street, NW, Suite 801, Washington, DC.

The agenda for the meeting will include:

Thursday, October 2, 1997

- Opening Remarks.
- FAA Report.
- Joint Aviation Authorities (JAA) Report.
- Transport Canada Report.
- Executive Committee (EXCOM) Report.
- Issues List and Tasking Chart.
- Action Item Reports.
- Uncontained Engine Failure.
- FAA Icing Plan.
- Flight Test Guide Status Report.
- Flight Test Harmonization Working Group (HWG) Report.
- Powerplant Installation HWG Report.
- Systems Design and Analysis HWG Report.

Friday, October 3, 1997

- Electromagnetic Effects HWG Report.
- Loads and Dynamics HWG Report and Vote.
- Engine HWG Report.
- Airworthiness Assurance HWG Report.
- Hydraulic Test HWG Report.
- Review Action Items.
- Review Future Meeting Schedule and Set Next Meeting.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by September 22, 1997 to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by providing copies at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as a listening device, if requested 10 calendar days before the meeting.

The Loads & Dynamics HWG is requesting a vote to accept recommendation of a notice of proposed rulemaking (NPRM) concerning Interaction of Systems an Structures. Arrangements may be made to present statements, request sign, oral interpretation, or listening devices, and request a copy of the NPRM by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on September 11, 1997.

Jean Casciano,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–24717 Filed 9–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–32 (Sub–No. 80X)]

Boston and Maine Corporation—Abandonment Exemption—in Hartford County, CT

Boston and Maine Corporation (B&M) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon and discontinue service over the Wethersfield Secondary line between milepost 3.0 in Hartford, CT, and milepost 7.0 in Wethersfield, CT, a distance of approximately 4.0 miles, in Hartford County, CT. The line traverses United States Postal Service Zip Codes 06109 and 06067.

B&M has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 17, 1997, unless stayed pending reconsideration. Petitions to stay that do

not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 29, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 7, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

B&M has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 22, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by September 17, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: September 10, 1997.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–24706 Filed 9–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33453]

Paducah & Louisville Railway—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to extend existing overhead trackage rights to Paducah & Louisville Railway (P&L)[1] from the Providence 1 Mine located on CSXT's Morganfield Branch, at or near milepost MB 288.8, to the Diamond J Mine located at or near milepost MB 291.93, on the Morganfield Branch, an additional distance of 3.1 miles in Hopkins County, KY.

The transaction was scheduled to be consummated on September 9, 1997.

The purpose of the trackage rights is to allow P&L to handle movements of coal from the Diamond J 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. 33453, 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.

[1] *See Paducah & Louisville Railway—Trackage Rights—CSX Transportation, Inc.,* STB Finance Docket No. 33405 (STB served June 11, 1997).

Decided: September 9, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–24704 Filed 9–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33454]

Union Pacific Railroad Company—Trackage Rights Exemption—Illinois & Midland Railroad, Inc.

Illinois & Midland Railroad, Inc. has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) from milepost 75.4, near Barr, IL, to milepost 85.1, near Springfield, IL, a distance of 9.7 miles in Menard and Sangamon Counties, IL.

The transaction is scheduled to be consummated on or after September 11, 1997.

The purpose of the trackage rights is to facilitate efficient train operations in a continuous route to and from Peoria, IL, after UP has abandoned its rail line between Barr and Girard, IL.[1]

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. 33454, 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

[1] UP has filed an abandonment application in *Union Pacific Railroad Company—Abandonment—Barr-Girard Line in Menard, Sangamon, and Macoupin Counties, IL,* Docket No. AB–33 (Sub-No. 96) (STB served Aug. 12, 1996) which was related to, and contingent upon the merger approved in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad,* Finance Docket No. 32760 (Decision No. 44) (STB served Aug. 12, 1996).

pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Decided: September 9, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–24705 Filed 9–16–97; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 62, No. 180

Wednesday, September 17, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 19

[FAC 97–01; FAR Case 96–002; Item IX]

RIN 9000–AH66

Federal Acquisition Regulation; Certification of Competency

Correction

In rule document 97–21494 beginning on page 44819 in the issue of Friday, August 22, 1997 make the following correction:

9.103 [Corrected]

On page 44819, in the third column, under 9.103, in paragraph (b), in the fifth line, ''Responsibil'' should read ''Responsibility''.

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

Correction

In notice document 97–24011 appearing on page 47507 in the issue of Tuesday, September 9, 1997 make the following correction:

On page 47507, in the first column, under **TIME AND DATE**, in the second line, ''September 25, 1997'' should read ''September 15, 1997''.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Document: Reporting of Pregnancy Success Rates From Assisted Reproductive Technology Programs; Notice of Comment Period

Correction

In notice document 97–22611 beginning on page 45259, in the issue of Tuesday, August 26, 1997, make the following corrections:

1. On page 45260, in the second column, in the *B. External Validation of Clinc Data* section, in the fourth line, ''occyte'' should read ''oocyte''.

2. On page 45261, in the third column, in the sixth paragraph, in the first line, ''Fress'' should read ''Fresh''.

BILLING CODE 1505-01-D

federal register

Wednesday
September 17, 1997

Part II

Department of Education

34 CFR Parts 300, 301, and 303
IDEA Amendments of 1997; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 300, 301, and 303

IDEA Amendments of 1997

AGENCY: Department of Education.

ACTION: Notice of public meetings.

SUMMARY: The Secretary announces a series of seven public meetings to obtain public comment on the anticipated Notice of Proposed Rule Making (NPRM) for 34 CFR Parts 300, 301, and 303 to implement the statutory requirements of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA Amendments of 1997), Pub. L. 105–17. In the alternative, should the NPRM not be published by the time a meeting or meetings are held, the Secretary will use the meeting or meetings as an opportunity to receive public comment on how to regulate to implement the statutory provisions of IDEA Amendments of 1997.

DATES: See Supplementary Information section for meeting dates.

ADDRESSES: See Supplementary Information section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: For information regarding the statutory requirements of IDEA Amendments of 1997, call JoLeta Reynolds or Thomas Irvin at 202–205–5507. Persons wishing to obtain additional information regarding the regional meetings should call Laura Black Price at 202–205–8969 (voice) or 202–205–5467 (TDD). Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Individuals who cannot attend the meetings are invited to send written comments. Comments on the NPRM should be directed to Thomas Irvin, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 4607, MES Building, 330 C Street, SW, Washington, DC 20202, or fax your comments to 202–260–0416. Comments should specifically reference the section or sections of the NPRM being referred to and must be received not later than 90 days after the publication of the NPRM in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Department anticipates in the near future publishing a Notice of Proposed Rule Making (NPRM) for 34 CFR Parts 300, 301, and 303 to implement changes occasioned by the IDEA Amendments 1997. The purpose of the meetings is to take public comment on the NPRM, if it has been published by the date of the meeting or meetings, or, if the NPRM has not been published by that meeting date, to receive public comment on how to regulate to implement the statutory provisions of IDEA Amendments of 1997. This effort is part of a broader initiative to provide opportunities for full and open input from the various constituencies interested in the programs administered by the Office of Special Education and Rehabilitative Services (OSERS).

Regional Meetings

Individuals who wish to make a statement at any of the regional meetings are encouraged to do so. Time allotted for each individual to testify will be limited and will depend on the number of speakers wishing to testify at each session. It is likely that each participant choosing to comment will be limited to four minutes. Persons interested in making oral public comment will be able to sign-up to make a statement on the day of the regional meeting at the Department's public meeting on-site registration desk on a first-come-first-served basis. If no time slots remain, then the Department will reserve a limited amount of additional time at the end of each hearing to accommodate those individuals. (Every effort will be made to have ample time to hear all individuals who wish to make a statement.)

Any individual who will need accommodations for a disability in order to participate in a regional meeting (e.g., interpreting services, assistive listening devices, materials in alternate format) should notify Laura Black Price at 202–205–8969 (voice) 205–5465 (TDD), or 202–260–0416 (fax) by no later than 14 days prior to the meeting the individual will attend. We will attempt to meet requests received after this date, but cannot guarantee availability of the requested accommodation. All regional meeting sites are accessible to individuals with disabilities.

The dates and location of the seven regional meeting appear below. The U.S. Department of Education is announcing these public meetings in advance of the publication of the NPRM so as to allow interested parties sufficient time to schedule travel and accommodations, as necessary. The Department has made arrangements for a limited number of rooms at a special government per diem room rate that participants may reserve at their own expense. All costs for these rooms will be the participant's own. To reserve a room at these rates you must inform the hotel that you are attending the regional meeting of the U.S. Department of Education and make reservations prior to the reservation expiration date indicated below. When making reservations, individuals must indicate the need for any special accommodations.

Individuals from OSERS and other offices of the Department of Education will be available at the meetings to receive public comment on the NPRM, if it has been published by the date of the meeting, or if the NPRM has not been published by the date of the meeting, to receive public comment on how to regulate to implement the statutory requirements. Participants are particularly encouraged to express their support for or raise concerns about specific sections of the proposed regulations and, if possible, to provide recommendations for specific regulatory language. A copy of the IDEA Amendments of 1997 is available on the world wide web at (www.ed.gov/offices/OSERS/OSEP/).

Dates, Time, and Location of Meetings:

Boston:
Thursday, October 23, 1997, 2:00 pm–7:00 pm.
Logan Ramada Hotel
75 Service Road
Logan International Airport
Boston, MA 02128
Reservations: Call toll-free 1–800–272–6232 or 617–569–9300. *Cut-off date for discounted room rate:* October 1.

Atlanta:
Monday, October 27, 1997, 2:00 pm–7:00 pm.
Radisson Hotel Atlanta
165 Courtland & International Blvd.
Atlanta, GA 30303
Reservations: Call toll-free 1–800–833–8624 or 404–659–6500. *Cut-off date for discounted room rate:* September 26.

Dallas:
Tuesday, October 28, 1997, 2:00 pm–7:00 pm.
Radisson Hotel Dallas
1893 West Mockingbird Lane
Dallas, TX 75235
Reservations: Call toll-free 1–888–588–9846 or 214–634–8850. *Cut-off date for discounted room rate:* October 13.

Washington:
Tuesday, November 4, 1997, 1:00 pm–5:00 pm.
(No hotel rooms have been reserved for this regional meeting)
Government Services Administration (GSA) Building, Auditorium, first floor, 7th & D Streets, SW (Use main entrance off D Street) Washington, DC 20407
Contact Laura Black Price at 202–205–

8969 (voice), 205–5465 (TDD), or 202–260–0416 (fax) by Friday, October 31 to place your name on the list of attendees for entrance into the building.

Denver:

Tuesday, November 18, 1997, 2:00 pm–7:00 pm.

Four Points Hotel
3535 Quebec Street
Denver, CO 80207

Reservations: Call toll-free 1–800–328–2268 or 303–333–7711. *Cut-off date for discounted room rate:* October 26.

San Francisco:

Friday, November 24, 1997, 2:00 pm–7:00 pm.

Holiday Inn Select/Chinatown
750 Kearny Street
San Francisco, CA 84108
415–433–6600

Reservations: Call toll-free 1–800–243–1135 or 415–433–6600. *Cut-off date for discounted room rate:* October 16.

Chicago:

Monday, November 24, 1997 2:00 pm–7:00 pm.

Sheraton North Shore
933 Skokie Boulevard
Northbrook, IL 60062

Reservations: Call toll-free 1–800–535–9131 or 847–498–6500. *Cut-off date for discounted room rate:* November 3.

Dated: September 12, 1997.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–24703 Filed 9–16–97; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
September 17, 1997

Part III

The President

Proclamation 7019—National Week of Food Recovery, 1997

Proclamation 7020—National Hispanic Heritage Month, 1990

Proclamation 7021—50th Anniversary of the National Security Act of 1947

Federal Register
Vol. 62, No. 180
Wednesday, September 17, 1997

Presidential Documents

Title 3—

The President

Proclamation 7019 of September 12, 1997

National Week of Food Recovery, 1997

By the President of the United States of America

A Proclamation

The American people are blessed with rich natural resources and an agricultural sector that is the most efficient and productive in the world. It is a tragic reality, however, that in this land of plenty, many of our fellow Americans still go hungry each day. This statistic becomes even more heartbreaking when we realize that about 27 percent of the estimated 356 billion pounds of food that America produces each year goes to waste at the retail, wholesale, and consumer levels.

Most of this loss occurs in the commercial food chain, as food travels from farms to wholesale markets, manufacturers, supermarkets, company cafeterias, and restaurants, and much of it is recoverable. Whether it be day-old bread at a bakery or an extra pan of lasagna not served by a restaurant or cafeteria, a significant amount of this food is perfectly edible and wholesome. Throwing away such food is an intolerable loss, because it both denies hungry Americans a vital source of nourishment and wastes precious resources. Municipalities across the country currently spend about $1 billion a year in tax dollars to dispose of excess food.

There is a growing national movement to recover this food and distribute it to Americans in need. This movement, led by nonprofit groups and energized by new efforts at the Department of Agriculture, is making a noticeable difference in the amount of edible excess food that is finding its way to hungry people rather than ending up in dumpsters.

Every sector of our society—from individuals to large institutions—can do more to glean and recover excess food. Every person can have an impact. Individuals can donate canned and boxed goods to food drives; they can give their time and money to food recovery organizations; they can even encourage the places where they work—and the businesses they patronize—to get involved in this movement.

Food recovery efforts will never replace a strong Federal safety net that includes such critical programs as the Food Stamp Program; the Special Supplemental Nutrition Program for Women, Infants and Children; the National School Lunch and School Breakfast Programs; and nutrition education efforts. However, extra food, provided through food recovery, can serve as a vital supplement to the diets of millions of Americans in need.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 14 through September 20, 1997, as National Week of Food Recovery, to be held in conjunction with the National Summit on Food Recovery. I call on all Americans to observe this week by actively participating in and supporting efforts to recover food for distribution to hungry Americans.

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

William J. Clinton

[FR Doc. 97–24902
Filed 9–16–97; 9:04 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7020 of September 12, 1997

National Hispanic Heritage Month, 1997

By the President of the United States of America

A Proclamation

Throughout our history, America's promise of individual freedom and opportunity has drawn millions upon millions of immigrants from across the globe. As these newcomers arrived, they gradually wove their own traditions into the tapestry of our Nation's culture and society. The world's economy is becoming ever more interdependent and competitive, and these changes and others brought on by the revolution in communication technologies are lowering many of the old barriers to economic, cultural, and intellectual exchange among nations. In this new global community, we benefit greatly from the contributions that Hispanic Americans bring to our economy and our society.

As the youngest and fastest-growing segment of our population, Hispanic Americans are an increasingly vital part of our economy. In the first 3 years of our Administration, more than 220,000 Hispanic-American-owned businesses were created, and in recent years the number of companies owned by Hispanic women, in particular, has grown at three times the overall rate of business growth. Our citizens with roots in South and Central America, the Caribbean, and Spain have inherited an entrepreneurial spirit and an intense work ethic that have helped energize the strongest American economy in a generation. The new head of the Small Business Administration, Aida Alvarez, is a symbol of that spirit and its importance to America. Along with Secretary of Energy Federico Peña, Under Secretary of Agriculture I. Miley Gonzales, and Ambassador Bill Richardson, the United States Representative to the United Nations, Administrator Alvarez reflects my Administration's continuing commitment to bring highly qualified Hispanic Americans into the highest levels of Government.

Our Hispanic citizens also are vital to America's success in expanding trade and developing closer ties with nations throughout the Western Hemisphere. Sharing a rich cultural and linguistic heritage with Hispanic Americans, these nations are already among our closest trading partners, and we hope to further expand our relationships with them at the Summit of the Americas next March.

The contributions of Hispanic Americans to the life of our Nation are much more than economic. Their strong commitment to family, community, and country sets a shining example for all our people. Generations of Hispanic Americans have served and sacrificed in America's Armed Forces to defend liberty and advance democracy throughout the world. And Hispanic culture continues to deeply enrich our social, intellectual, and artistic life.

To meet the challenges of the 21st century, we must create a society that offers opportunity to all Americans, requires responsibility from all Americans, and nurtures a community of all Americans. Hispanic Americans throughout our country are working to build such a society. To honor them for their dedication to this endeavor and for their many contributions to our Nation and our culture, the Congress, by Public Law 100-402, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 15 through October 15, 1997, as National Hispanic Heritage Month. I call upon all government officials, educators, and the people of the United States to honor this observance with appropriate programs, ceremonies, and activities, and I encourage all Americans to rededicate themselves to the pursuit of equality.

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

William J. Clinton

[FR Doc. 97–24903
Filed 9–16–97; 9:04 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7021 of September 15, 1997

50th Anniversary of the National Security Act of 1947

By the President of the United States of America

A Proclamation

The United States emerged from the crucible of World War II to face a political and military landscape changed forever by the events of that conflict. The Soviet Union, a vital ally during the war, was fast becoming an actively hostile and dangerous opponent. And, as the most economically and militarily powerful nation on earth, the United States bore the awesome responsibility of preventing the onset of another and even more destructive world war.

Recognizing these harsh new realities, and wise in the hard lessons of recent history, President Truman and America's other civilian and military leaders determined to create the structures and programs that would guarantee our national security and promote lasting world peace. The result of their efforts was the National Security Act of 1947. This single historic piece of legislation created four extraordinary institutions that continue to serve America superbly a half-century later: the Department of Defense, the United States Air Force, the Central Intelligence Agency, and the National Security Council.

The complex task of coordinating the operations of ground, sea, and air forces during World War II demonstrated the need for unified direction of America's Armed Forces in the postwar world. The National Security Act answered that need by establishing the Department of Defense. Under the civilian control of the Secretary of Defense, and fortified by the collective experience, knowledge, and strategic guidance of the Joint Chiefs of Staff, the three military departments within the Department of Defense—the Army, Navy, and Air Force—began to work together as a powerful team to integrate the operation and administration of all our Nation's Armed Forces.

Today, the Department of Defense has realized in large measure the objectives stated in the National Security Act. The Armed Forces and the unified commands have achieved a remarkable degree of integration in organization and operations and remain the best-trained, best-equipped, and best-prepared fighting force in the world. Our men and women in uniform stand ready to preserve America's freedom and protect our national interests whenever and wherever they are threatened.

The Second World War also proved the critical importance of air power to the defense of our Nation. With the creation of the United States Air Force as an independent armed service within the Department of Defense, the National Security Act helped to ensure America's mastery of the skies. In the subsequent 50 years, the courage and dedication of the men and women of the United States Air Force have been a constant source of pride and reassurance to the American people.

With equal devotion, the men and women of the Central Intelligence Agency have enabled America to meet the challenges of global leadership for the past half-century. Providing ten Presidents and their administrations with the strategic intelligence to make informed decisions vital to the security of our Nation, these dedicated public servants helped America to fight and win the Cold War. Today, in a world no longer burdened by superpower confrontation, they remain vigilant in the face of more diffuse and complex

dangers: from aggression by rogue states and terrorism to the spread of weapons of mass destruction and international drug trafficking.

In creating the National Security Council, the National Security Act of 1947 provided the President with an invaluable forum for the consideration and coordination of domestic, foreign, and military policies related to America's security. Supporting the President, his Cabinet, and his other close advisors with sound judgment, analysis, and advice, the men and women of the National Security Council can reflect with pride on five decades of unparalleled service to our Nation. Through the East-West confrontations of the Cold War to the threshold of the 21st century, the National Security Council has played a vital role in protecting our Nation's security and in preparing us for the challenges of the future.

As we observe the 50th anniversary of the National Security Act of 1947, we pay tribute to the vision and determination of a generation of American civilian and military leaders. Working together, they established the remarkable institutions we celebrate this week; institutions that have helped to secure the peace and prosperity that America enjoys today. The success of their efforts and of the historic legislation enacted half a century ago is reflected in an outstanding record of achievement: nuclear war averted, the Cold War won, and the nations of the world turning to democracy and free markets.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 14 through September 20, 1997, as a time to commemorate the 50th Anniversary of the National Security Act of 1947. I call upon all Americans to observe this anniversary with appropriate programs and activities celebrating the accomplishments of this legislation and honoring the service and sacrifice of the thousands of dedicated Americans who have strived to carry out its mandate for the past five decades.

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

William J. Clinton

[FR Doc. 97–24904
Filed 9–16–97; 9:04 am]
Billing code 3195–01–P

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Federal Register

Vol. 62, No. 180

Wednesday, September 17, 1997

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

46175–46430 2
46431–46664 3
46665–46866 4
46867–47136 5
47137–47358 8
47359–47550 9
47551–47744 10
47745–47912 11
47913–48164 12
48165–48448 15
48449–48730 16
48731–48934 17

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7018 47911
7019 48929
7020 48931
7021 48933
Executive Orders:
13061 48345
Memorandums:
1Presidential Determination No. 97–31 of August 16, 1997 47907
Presidential Determination No. 97–32 of September 12, 1997 48729

5 CFR

338 46553
870 48731
871 48731
872 48731
873 48731
874 48731
1201 48449
2423 46175
2429 46175
2634 48746
2635 48746
Proposed Rules:
532 46221

7 CFR

201 48456
301 .....47551, 47553
361 48456
441 47745
457 47745
500 46431
633 48471
905 47913
997 48749
998 48749
1011 .....46665, 47923
1205 46412
1207 46175
1610 46867
1735 46867
1737 46867
1739 46867
1746 46867
Proposed Rules:
Ch. IV 48798
Ch. XIII 47156
319 47770
400 47772
1962 47384
1965 47384
1980 47384

8 CFR

214 48138
235 47749
274a 46553
Proposed Rules:
3 48183
236 48183

9 CFR

77 48165
78 .....48475, 48751
94 .....46179, 48751
96 46179
Proposed Rules:
319 46450

10 CFR

19 48165
50 47268
207 46181
218 46181
430 .....46181, 47536
490 46181
501 46181
601 46181
820 46181
1013 46181
1017 46181
1050 46181
Proposed Rules:
9 46922
50 .....47268, 47588

12 CFR

25 47728
208 47728
210 48166
211 47728
229 48752
369 47728
936 46872
Proposed Rules:
303 47969
337 47969
362 .....47969, 48025

13 CFR

105 48477

14 CFR

11 46864
13 46864
15 46864
39 .....46184, 46186, 46189, 47359, 47360, 47362, 47364, 47753, 47754, 47927, 47930, 47931, 47933, 48477, 48754
71 .....46873, 46874, 47366, 47756, 47757, 47758, 47759
121 48135
125 48135
135 48135
185 46864
Proposed Rules:
39 .....46221, 48187, 48189,

48499, 48502, 48506, 48510, 48513, 48517, 48520, 48524, 48528, 48531, 48535, 48538, 48542, 48546, 48549, 48553, 48556, 48560, 48563, 48567, 48570, 48574, 48577, 48581, 48799
71 .....47776, 47777, 47778, 47779, 47780, 47781, 48025
107.....48190
108.....48190
139.....48190
255.....47606
260.....48584

15 CFR

922.....47137
Proposed Rules:
280.....47240
295.....48802
911.....47388
922.....47611

16 CFR

1000.....46666
1014 .....46666, 48756, 48756
1015.....46192
1021.....46666
1051.....46666
1115.....46666
1211.....46666
1402.....46666
1406.....46666
1500.....46666
1502.....46666
1700.....46666
1702.....46666

17 CFR

200.....47367
202.....47934
230.....47934
232.....47934
239.....47934
270.....47934
274.....47934
Proposed Rules:
1.....47612
30.....47612
33.....47612
190.....47612

19 CFR

7.....46433
10.....46433, 46553
148.....46433
178.....46433
Proposed Rules:
351.....46451

20 CFR

222.....47137
229.....47137
Proposed Rules:
404.....46682

21 CFR

5.....48756
10.....47760
20.....47760
25.....47760
50.....46198
56.....46198
71.....47760
101.....47760
170.....47760
171.....47760
312 .....46198, 46875, 47760
314.....46198, 47760
511.....47760
514.....47760
520.....46668
558.....46443
570.....47760
571.....47760
601.....46198, 47760
610.....48174
812.....46198, 47760
814.....46198, 47760
Proposed Rules:
310.....46223, 47532
334.....46223
884.....46686

22 CFR

41.....48149
171.....48757
514.....46876

24 CFR

Ch. V.....47284
Proposed Rules:
968.....47740
1000.....47783
1003.....47783
1005.....47783

25 CFR

Proposed Rules:
502.....46227

26 CFR

1.....46876, 46877

28 CFR

Proposed Rules:
540.....47894

29 CFR

1910.....48175
4044.....48176
Proposed Rules:
2560.....47262

30 CFR

914.....47138
946.....48758
Proposed Rules:
946.....48807
100 .....47330, 48765, 48766, 48767, 48768
773.....47617
870.....47617
917.....46933
934.....46695, 00000

31 CFR

Ch. V.....48177
103.....47141
344.....46443
357.....46860
Proposed Rules:
103.....47156
208.....48714
212.....46428

32 CFR

199.....46877
311.....46445
505.....48480
706.....47944

33 CFR

100 .....46553, 46669, 48769 48770
117.....46879, 46880
151.....46446
155.....48770
165.....46670, 46671
Proposed Rules:
117.....46697
334.....47166

34 CFR

300.....48924
301.....48924
303.....48924

35 CFR

104.....48178

36 CFR

Proposed Rules:
292.....47167

38 CFR

1.....47532
3.....47532
9.....47532

39 CFR

20.....47558
Proposed Rules:
20.....47394
111.....47178, 48191

40 CFR

9.....47114
32.....47149
52 .....46199, 46202, 46208, 46446, 46880, 47369, 47760, 47946, 48480, 48483
55.....46406
60.....48348
81.....46208
86.....47114
136.....48394
180 .....46882, 46885, 46888, 46894, 46900, 47560, 47561
185.....47561
186.....46900, 47561
271.....47947
300.....46211
Proposed Rules:
9.....46937
52 .....46228, 46229, 46451, 46938, 47399, 47784, 48026, 48027, 48033, 48584, 48585, 48586,
60.....46453
63.....46804
70.....46451
79.....47400
81 .....46229, 46234, 46238
86.....46937
170.....47544
260.....47401
261.....47401, 47402
273.....47401
300 .....46938, 47619, 47784

41 CFR

Proposed Rules:
101–1.....47179
101–46.....47179

42 CFR

416.....47237
440.....47896
Proposed Rules:
416.....46698
1000.....47182
1001.....47182, 47195
1002.....47182
1005.....47182

43 CFR

1810.....47568

44 CFR

65.....47954
67.....47955
Proposed Rules:
67.....48193

46 CFR

28.....46672
298.....47149

47 CFR

1.....47960, 48773
2.....47960
25.....48486
26.....47960
52.....48774
54.....47369
61.....48485
64 .....46447, 47152, 47237, 47369, 48787
68.....47371
69.....47369, 48485
73 .....47371, 47762, 47763
79.....48487
90.....46211
97.....47960, 47961
101.....48787
Proposed Rules:
1.....46241, 48034
54.....47404, 48042
64.....47404
69.....48042
73 .....46707, 46708, 47406, 47786, 47787
76.....46453
80.....46243
90.....46468

48 CFR

9.....48921
19.....48921
204.....48181
212.....47153
225.....47153
231.....47154
244.....47153
252.....47153
253.....48181
704.....47532
715.....47532
726.....47532
750.....47532
752.....47532
1602.....47569
1603.....47569
1604.....47569
1615.....47569
1616.....47569
1629.....47569
1631.....47569
1643.....47569
1644.....47569

1645.....47569
1649.....47569
1652.....47569
1653.....47569

Proposed Rules:

46.....47882
204.....48200
212.....47407, 48200
215.....48205
225.....47407
252.....47407, 48200
833.....47411
852.....47411

49 CFR

172.....46214
174.....46214
175.....46214
176.....46214
177.....46214
193.....48496
571.....46907
575.....46447
580.....47763
1002.....46217, 48497
1108.....46217, 48497
1121.....47583
1150.....47583
1206.....46919

Proposed Rules:

571.....47414

50 CFR

20.....46420
25.....47372
32.....47372
285.....48497
600.....47584
622 .....46677, 46679, 47765, 47766
648.....47767
660.....46920, 47587
679 .....46680, 46681, 47768, 48497, 48498

Proposed Rules:

17 .....46709, 46710, 48206
20.....46801
630.....47416
648 .....46470, 48047, 48207

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 17, 1997

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Peaches grown in—-

Georgia; published 8-18-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

African swine fever; disease status change—

Italy, except Sardinia; published 9-2-97

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act; implementation; published 9-17-97

FEDERAL COMMUNICATIONS COMMISSION

Communications equipment:

Radio frequency devices—

Personal computers and peripherals; digital devices equipment authorization; declaration of conformity procedure clarification and improvement; published 8-4-97

Personal computers and peripherals; equipment authorization procedures for digital devices; effective date delay; published 6-19-97

GOVERNMENT ETHICS OFFICE

Government ethics:

Superseded references to former honorarium ban removed and other technical amendments; published 9-17-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare and medicaid programs:

Provider agreement and supplier participation; effective dates; published 8-18-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Virginia; published 9-17-97

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Michigan; published 8-18-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 9-2-97

British Aerospace; published 9-2-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (tart) grown in—

Michigan et al.; comments due by 9-24-97; published 8-25-97

Kiwifruit grown in—

California; comments due by 9-25-97; published 8-26-97

Oranges, grapefruit, tangerines, and tangelos grown in Florida; comments due by 9-22-97; published 9-12-97

Pears (Bartlett) grown in Oregon et al.; comments due by 9-24-97; published 8-25-97

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Stonefruit; comments due by 9-22-97; published 7-22-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Sablefish; comments due by 9-22-97; published 9-5-97

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):

Active duty dependents dental plan; extension to overseas areas; comments due by 9-23-97; published 7-25-97

Vietnam, Democratic Republic (North Vietnam); compensation of former incarcerated operatives; comments due by 9-23-97; published 7-25-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Synthetic √1√organic chemical manufacturing industry and other processes subject to equipment leaks negotiated regulation

Correction; comments due by 9-22-97; published 8-22-97

Synthetic √2√organic chemical manufacturing industry; chemical production processes list; additions and deletions; comments due by 9-22-97; published 8-22-97

Air pollution control; new motor vehicles and engines:

National low emission vehicle program; voluntary standards; State commitments; comments due by 9-22-97; published 8-22-97

Air pollution; standards of performance for new stationary sources:

Municipal waste combustors—

Standards and emission guidelines; comments due by 9-24-97; published 8-25-97

Standards and emission guidelines; comments due by 9-24-97; published 8-25-97

Standards and emission guidelines; comments due by 9-24-97; published 8-25-97

Standards and emission guidelines; comments due by 9-24-97; published 8-25-97

Air quality implementation plans:

Preparation, adoption, and submittal—

Volatile organic compounds definition; methyl acetate exclusion; comments due by 9-24-97; published 8-25-97

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 9-24-97; published 8-25-97

Ohio; comments due by 9-24-97; published 8-25-97

Pennsylvania; comments due by 9-22-97; published 8-21-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Indiana; comments due by 9-25-97; published 8-26-97

Clean Water Act:

Pharmaceutical manufacturing—

Effluent limitations guidelines, pretreatment standards, and new source performance standards; comments due by 9-22-97; published 8-8-97

Solid waste:

Hazardous waste combustors, etc.; maximum achievable control technologies performance standards; comments due by 9-24-97; published 9-9-97

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 9-22-97; published 8-22-97

Water pollution control:

Water quality standards—

California; priority toxic pollutants; numeric criteria; comments due by 9-26-97; published 8-5-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Access charges—

Subscriber line charges, etc.; price cap rules; primary lines definition; comments due by 9-25-97; published 9-12-97

Communications equipment:

Radio frequency devices—

Unlicensed services operation; spectrum etiquette; use of 59-64 GHz band; comments due by 9-26-97; published 8-27-97

Radio broadcasting:

Pole attachments; comments due by 9-26-97; published 8-18-97
Radio stations; table of assignments:
Missouri; comments due by 9-22-97; published 8-6-97
Wisconsin; comments due by 9-22-97; published 8-6-97
Television broadcasting:
Cable television systems—
Telecommunications services inside wiring; cable home wiring disposition; comments due by 9-25-97; published 9-3-97
Television stations; table of assignments:
California; comments due by 9-22-97; published 8-6-97

FEDERAL RESERVE SYSTEM
Freedom of Information Act; implementation
Federal Open Market Committee; information availability; comments due by 9-25-97; published 8-26-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Child care and development fund; comments due by 9-22-97; published 7-23-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Dietary sugar alcohols and dental caries; health claims; comments due by 9-22-97; published 7-9-97
Medical devices:
Premarket approval applications, approval and denial; procedures revision; comments due by 9-25-97; published 6-27-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.—
Stone Mountain fairy shrimp; comments due by 9-22-97; published 7-22-97
Hawaiian ferns (four species); comments due by 9-22-97; published 7-22-97
Illinois cave amphipod; comments due by 9-26-97; published 7-28-97
Keck's checker mallow; comments due by 9-26-97; published 7-28-97
National wildlife refuge system:
Midway Islands and Midway Atoll National Wildlife Refuge; administration; comments due by 9-26-97; published 8-27-97

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Federal leases; natural gas valuation regulations; amendments; withdrawn; supplemental information comment request; comments due by 9-22-97; published 7-18-97

INTERIOR DEPARTMENT
National Park Service
National Park System:
Safety belts; required use by all motor vehicle occupants; comments due by 9-26-97; published 7-28-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Virginia; comments due by 9-24-97; published 8-25-97

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Permanent residence status eligibility restrictions; temporary removal; comments due by 9-22-97; published 7-23-97

JUSTICE DEPARTMENT
Freedom of Information Act and Privacy Act; implementation; comments due by 9-25-97; published 8-26-97

LABOR DEPARTMENT
Privacy Act; implementation; comments due by 9-23-97; published 7-28-97

LABOR DEPARTMENT
Workers' Compensation Programs Office
Federal Employees Compensation Act:
File material claims; use and disclosure; comments due by 9-23-97; published 7-28-97

POSTAL SERVICE
Domestic Mail Manual:
Commercial mail receiving agency; delivery of mail; procedure clarification; comments due by 9-26-97; published 8-27-97
International Mail Manual:
Global package link (GPL) service—
Mexico and Singapore; comments due by 9-25-97; published 8-26-97

TRANSPORTATION DEPARTMENT
Coast Guard
Offshore supply vessels; comments due by 9-23-97; published 7-25-97
Regattas and marine parades:
Miller Lite Offshore Challenge Boat Race at Islamorada, FL; comments due by 9-25-97; published 8-26-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Avco Lycoming et al.; comments due by 9-26-97; published 7-28-97
Ayres Corp.; comments due by 9-26-97; published 7-10-97
British Aerospace; comments due by 9-26-97; published 7-28-97
Cessna Aircraft Co.; comments due by 9-26-97; published 7-23-97
Fokker; comments due by 9-22-97; published 8-11-97
Israel Aircraft Industries; comments due by 9-22-97; published 8-11-97
McDonnell Douglas; comments due by 9-22-97; published 8-11-97
New Piper Aircraft, Inc.; comments due by 9-22-97; published 7-24-97
Raytheon; comments due by 9-23-97; published 7-30-97
Class B airspace; comments due by 9-22-97; published 8-22-97
Class E airspace; comments due by 9-22-97; published 8-22-97

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcohol; viticultural area designations:
Yorkville Highlands, Mendocino County, CA; comments due by 9-23-97; published 7-25-97

TREASURY DEPARTMENT
Thrift Supervision Office
Fiduciary powers of Federal savings associations; revision; and Community Reinvestment Act regulations; exempt savings associations; comments due by 9-22-97; published 7-23-97

VETERANS AFFAIRS DEPARTMENT
Medical benefits:
Non-VA physician services; outpatient or inpatient care provided at non-VA facilities; payment; comments due by 9-22-97; published 7-22-97

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

Last List August 19, 1997

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